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Security Council

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Letter dated 22 May 2003 from the President of the Security Council addressed to the Secretary-General

I have the honour to inform you that your letter dated 16 May 2003 (S/2003/562) concerning your intention to appoint William Lacy Swing (United States of America) as your Special Representative for the Democratic Republic of the Congo, effective 1 July 2003, has been brought to the attention of the members of the Security Council. They take note of the information and intention contained in your letter.

(*Signed*) Munir **Akram**
President of the Security Council

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Letter dated 21 May 2003 from the Permanent Representatives of Burkina Faso and Côte d'Ivoire to the United Nations addressed to the President of the Security Council

On instructions from our respective Governments, we have the honour to transmit herewith the text of the final communiqué adopted during the working and friendship visit of H.E. Mr. Youssouf Ouedraogo, Minister of State and Minister for Foreign Affairs and Regional Cooperation of Burkina Faso, to Abidjan, Republic of Côte d'Ivoire, on 8 and 9 May 2003 (see annex).

We should be grateful if you would have this letter and its annex circulated as documents of the Security Council.

(*Signed*) Djessan Philippe **Djangone-Bi**
Ambassador and Permanent Representative
of Côte d'Ivoire to the United Nations

(*Signed*) François **Oubida**
Chargé d'Affaires a.i.
Permanent Mission of Burkina Faso to the United Nations

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Annex to the letter dated 21 May 2003 from the Permanent Representatives of Burkina Faso and Côte d'Ivoire to the United Nations addressed to the President of the Security Council

Working and friendship visit of H.E. Mr. Youssouf Ouedraogo, Minister of State and Minister for Foreign Affairs and Regional Cooperation of Burkina Faso

Abidjan, 8 and 9 May 2003

Final communiqué

1. Pursuant to a proposal by H.E. Mr. Laurent Gbagbo, President of the Republic of Côte d'Ivoire, and H.E. Mr. Blaise Compaoré, President of Burkina Faso, H.E. Mr. Youssouf Ouedraogo, Minister of State and Minister for Foreign Affairs and Regional Cooperation of Burkina Faso paid a working and friendship visit to Côte d'Ivoire on 8 and 9 May 2003.

Minister of State Youssouf Ouedraogo was accompanied by a large delegation which included:

- Mr. Benoît Ouattara, Minister of Trade, Industry and Crafts;
- Mr. Patrice Nikiema, Minister Delegate to the Minister of Infrastructure, Transport and Urban Planning responsible for Transport;
- Mr. Yéro Boly, Director of the Cabinet of the President of Burkina Faso; and their colleagues.

2. During their visit, the Minister of State of Burkina Faso and his delegation held a working session with a delegation from the Ivorian Government headed by H.E. Mr. Patrick Achi, Minister of State for Economic Infrastructure, representing H.E. Mr. Mamadou Bamba, Minister of State for Foreign Affairs.

The Ivorian delegation also included:

- Mr. Théodore Mel Eg, Minister of State for African Integration;
- Mr. Innocent Kobenan Anaky, Minister of State for Transport;
- Mr. Zémogo Fofana, Minister of Higher Education and Acting Minister of Security;
- Mr. Sébastien Djédjé Dano, Minister of National Reconciliation;
- Mr. Adou Assoa, Minister of Water Resources and Forestry and Acting Minister of Defence;
- Ms. Victorine Gboko-Dailly Wodié, Minister for Human Rights.

This session focused on bilateral relations between the two countries.

3. After recognizing the interdependence of the two countries, the delegations of Côte d'Ivoire and Burkina Faso reaffirmed their strong desire to work together to restore confidence.

To that end, they stressed the need to initiate and promote the process of dialogue with a view to restoring and strengthening the centuries-old relations of

friendship and brotherhood that existed between the peoples of Côte d'Ivoire and Burkina Faso.

The two delegations agreed on the need to promote dialogue by establishing a coordination mechanism capable of creating new synergies in major areas of action such as:

- Trade and industry;
- Agriculture and livestock; and
- Transport

4. From the political perspective, the Government of Burkina Faso welcomes the reconciliation process under way in Côte d'Ivoire, which began with the formation of the Government of National Reconciliation, and invites the Burkina Faso community in Côte d'Ivoire to play an active role in that process.

The two delegations agreed to hold sectoral and technical meetings as a reflection of the two Governments' manifest political will to restore and renew economic and trade relations.

5. They also reaffirmed the need to make their borders secure, to ensure the free movement of goods and persons and to promote the protection of human rights.

They invited their respective Governments to establish a bilateral mechanism for monitoring their common border and invited political figures and the media to support their plans for more dynamic relations between the two countries.

6. Lastly, the delegations stressed the urgent need for the Côte d'Ivoire-Burkina Faso joint commission, inactive since 1997, to resume its work and for an acceleration of the process for the establishment of a joint commission for reconciliation and prevention of inter-community conflict, adopted by the two Governments in November 1999.

7. In the economic sphere, the delegations decided to take all possible action to accelerate a resumption of economic activity between the two countries.

In the light of the role played by the autonomous port of Abidjan in trade relations between Côte d'Ivoire and Burkina Faso, the two delegations encourage the taking of all measures that will allow it to serve its purpose fully.

In that connection, the delegation of Burkina Faso drew attention to the situation of the goods being held up in the port of Abidjan and expressed the hope that a positive solution to the problem would soon be found.

It also stressed the need for a resumption of railway traffic and trade, particularly trade in livestock and meat, between the two countries under optimum security conditions and with minimal impediments.

The delegation of Burkina Faso welcomed the Ivorian Government's decision to lift the declaration of a war zone which covered a portion of Burkina Faso's territory.

8. It took the occasion to welcome the recent visit to Ouagadougou of a large official Ivorian delegation, headed by the Minister of Trade, which had marked the beginning of renewed dialogue between the business communities of the two countries.

9. The meetings between the two delegations were characterized by full agreement on all the issues raised and took place in a climate of cordiality, brotherhood, frankness and mutual understanding.

10. H.E. Mr. Ouedraogo, Minister of State for Foreign Affairs and Regional Cooperation, paid a courtesy visit to H.E. Mr. Seydou Elimane Diarra, Prime Minister of Côte d'Ivoire.

11. Mr. Ouedraogo was also granted an audience with H.E. Mr. Laurent Gbagbo, President of the Republic of Côte d'Ivoire, at which he conveyed brotherly greetings from H.E. Mr. Blaise Compaoré, President of Burkina Faso.

12. On behalf of the President of Burkina Faso, Mr. Ouedraogo expressed his deep appreciation and gratitude to H.E. Mr. Laurent Gbagbo, President of the Republic of Côte d'Ivoire, and to the Ivorian Government and people for the warm welcome and brotherly hospitality extended to him and to his delegation during their visit.

13. Mr. Ouedraogo invited H.E. Mr. Mamadou Bamba, Minister of State for Foreign Affairs of Côte d'Ivoire, to pay a friendship and working visit to Burkina Faso.

14. The head of the Ivorian delegation accepted this invitation on behalf of Minister of State Mamadou Bamba; the date of the visit will be determined by mutual agreement through the diplomatic channel.

Done at Abidjan on 9 May 2003

For Côte d'Ivoire:

(*Signed*) Mr. Patrick **Achi**
Minister of State
Minister for Economic Infrastructure
Acting Minister of State for Foreign Affairs

For Burkina Faso:

(*Signed*) Mr. Youssouf **Ouedraogo**
Minister of State
Minister for Foreign Affairs and Regional Cooperation

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Report of the Secretary-General on the situation concerning Western Sahara

I. Introduction

1. The present report is submitted pursuant to Security Council resolution 1469 (2003) of 25 March 2003, by which the Council, reaffirming all its previous resolutions on Western Sahara, in particular resolution 1429 (2002) of 30 July 2002, extended the mandate of the United Nations Mission for the Referendum in Western Sahara (MINURSO) until 31 May 2003 and requested me to provide a report on the situation concerning Western Sahara by 19 May, including the views of the parties to the proposal that was presented to them by my Personal Envoy in January 2003. The present report covers developments since my previous report to the Council on the situation concerning Western Sahara, dated 16 January 2003 (S/2003/59).

II. Developments on the ground

A. Activities of my Special Representative

2. During the reporting period, my Special Representative for Western Sahara, William Lacy Swing (United States of America), continued to maintain regular contacts with representatives of the parties. He met regularly with officials of the Government of Morocco and the Frente Popular para la Liberación de Saguía el-Hamra y del Río de Oro (Frente POLISARIO) in Laayoune and the Tindouf area, in order to keep an open channel of communication with them and to review the situation on the ground. Mr. Swing also met regularly with senior officials of the parties and of neighbouring countries during his visits to Rabat in February and to Tindouf, Algiers and Nouakchott in April.

3. From 4 to 7 March, my Special Representative met with senior officials from the International Committee of the Red Cross (ICRC), the Office of the United Nations High Commissioner for Refugees (UNHCR) and the World Food Programme (WFP) in Geneva and Rome to discuss the resolution of pending humanitarian issues related to the conflict, including the implementation by UNHCR, in cooperation with MINURSO, of confidence-building measures; the continuing food shortages in the Tindouf area refugee camps; the Moroccan prisoners of war; and the fate of persons unaccounted for on either side since the

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beginning of the conflict. He also met there with representatives of major donor countries.

B. Activities of the Identification Commission

4. During the reporting period, the Identification Commission continued its work on the electronic archiving of the 244,643 individual files of persons who applied to be included in the list of voters for the referendum in Western Sahara. The Commission finished the work in mid-May. Hence, all the files have now been scanned, archived and safely stored on both hard disks and back-up tapes to ensure maximum security of the database.

C. Military aspects

5. As at 10 May 2003, the military component of MINURSO stood at 229 military observers and troops, against the authorized strength of 230 (see annex I). Under the command of Major General Gyorgy Száraz (Hungary), the component continued to monitor the ceasefire between the Royal Moroccan Army and the Frente POLISARIO military forces, which has been in effect since 6 September 1991. During the reporting period, the Mission's area of responsibility remained calm, and there has been no indication on the ground that either side intends to resume hostilities in the near future.

6. MINURSO ground and air patrols continued to visit and inspect, on both sides of the defensive sand wall, or berm, Royal Moroccan Army and Frente POLISARIO ground units larger than company size, in accordance with the ceasefire arrangements between MINURSO, on the one hand, and the Royal Moroccan Army and the Frente POLISARIO on the other. Both the Royal Moroccan Army and the Frente POLISARIO military forces have continued to carry out routine maintenance and training activities.

7. The Frente POLISARIO continues to impose some minor limitations on the Mission's freedom of movement. While these limitations do not significantly affect the ability of MINURSO to monitor the situation east of the berm, their removal would increase the efficiency of the Mission's ground and air patrolling activities.

8. MINURSO has continued to cooperate with the parties on the marking and disposal of mines and unexploded ordnance. During the reporting period, MINURSO discovered and marked 14 mines and pieces of unexploded ordnance and monitored 16 disposal operations carried out by the Royal Moroccan Army. On 19 February, the Frente POLISARIO reported a mine accident resulting in the death of one civilian in the area of responsibility of MINURSO team site Mijek (southern sector). MINURSO is also assisting the Mine Action Service of the Department of Peacekeeping Operations in preparing a regional landmine and unexploded ordnance safety workshop for Western Sahara, to be held in Mauritania from 25 to 28 June 2003, for United Nations peacekeepers and civilian staff in the area.

9. Work has begun on the establishment in MINURSO of an Information Management System Unit using the Information Management System for Mine Action (IMSMA), which is expected to become operational in the second half of 2003. On behalf of the Mine Action Service, the Geneva International Centre for

Humanitarian Demining has undertaken to provide MINURSO with installation support, training, software maintenance and upgrades, as well as general support services, as the IMSMA project develops. With IMSMA, MINURSO will be able to consolidate the data on mines and unexploded ordnance that it has collected over the years for use in planning any future mine action in the area.

D. Civilian police aspects

10. As at 10 May, the strength of the civilian police component of MINURSO stood at 26 officers (see annex I), under the command of Inspector General Om Prakash Rathor (India). The component continued to carry out protection duties in relation to files and sensitive materials at the Identification Commission centres in Laayoune and Tindouf. Training of civilian police officers has continued, including briefings by UNHCR on the protection aspects of voluntary repatriation and international instruments concerning refugees.

E. Prisoners of war, other detainees and persons unaccounted for

11. My Special Representative has continued to impress upon the Frente POLISARIO the need to release all remaining prisoners of war and upon both parties the need to cooperate actively with ICRC in determining the fate of persons who are unaccounted for. On 7 February he visited a detention centre in the Tindouf area in which prisoners of war were being held.

12. On 26 February ICRC repatriated to Morocco 100 prisoners of war, whose release the Frente POLISARIO had announced on 10 February in response to a request by a Member State. The Frente POLISARIO continues to hold 1,160 prisoners of war, some of whom have been in detention for more than 20 years.

F. Western Saharan refugees

13. It will be recalled that a senior UNHCR official and my Special Representative held discussions with the parties in November and December 2002 on the implementation of UNHCR confidence-building measures. The Governments of Algeria and Mauritania were also consulted with regard to the proposed activities. Although agreeing in principle to such measures, the Frente POLISARIO and the Government of Morocco expressed divergent views on the selection criteria of family visits between the Tindouf area refugees and their communities of origin in Western Sahara. Efforts to achieve a compromise formula have failed thus far, as neither side is willing to reconsider its position on the use of the provisional list of voters as the primary basis for participant selection.

14. UNHCR and my Special Representative nevertheless continued their efforts to implement confidence-building measures, focusing on those activities that were not contested. My Special Representative met individually with officials of the Frente POLISARIO and the Government of Morocco in February to discuss a reduced and simplified UNHCR proposal on confidence-building measures to provide limited, UNHCR-operated telephone and personal mail services between some of the Tindouf area refugee camps and the Territory. The new proposal did not include any

activities involving the movement of persons across the berm, although such activities could be revisited at a later stage. Following the talks, in March the Frente POLISARIO and the Government of Morocco formally concurred in the commencement of those limited services. My Special Representative informed the Governments of Algeria and Mauritania of this development in April.

15. Accordingly, on 15 April UNHCR inaugurated a free one-way, telephone service between the "27 February" refugee camp and the Territory. On 16 April, however, the Frente POLISARIO requested that the service be suspended until the end of April in order to put in place logistical arrangements enabling refugees from other, distant camps with no telephone service to travel to the UNHCR telephone centre to use the service. As at 14 May, the telephone service had not yet been reactivated. Given its useful impact on person-to-person contact, UNHCR and my Special Representative will continue to advocate the quick resumption of the telephone service.

16. UNHCR also intended to inaugurate on 15 May a two-way personal mail exchange between the Tindouf refugee camps and the city of Laayoune in the Territory. The start of this service has been postponed pursuant to a request of the Government of Morocco, pending further technical discussions with UNHCR regarding the modalities of its implementation.

17. UNHCR remains ready to resume the suspended telephone service, launch the mail service and begin preparations, in close cooperation with MINURSO, for the extension in mid-June of the UNHCR telephone service to camp El Ayun and, later, to other refugee camps and of the personal mail service to other Western Saharan cities. All these activities are, of course, subject to the availability of funding, continued interest from beneficiaries and the full cooperation of the parties.

18. Although the overall situation of food assistance to the Western Saharan refugees in the Tindouf area has improved slightly, shortages remain of some critical items, such as cereals and vegetable oil, and the overall level of donor support for the WFP assistance programme for Western Saharan refugees continues to be low.

G. African Union

19. On 20 February a delegation of senior African Union representatives visited the Tindouf area refugee camps to conduct an evaluation of the situation and deliver a symbolic $100,000 donation for the refugees. On 22 April the interim Chairperson of the Commission of the African Union, Amara Essy, met in the Tindouf area with senior Frente POLISARIO leaders.

20. During the reporting period, the African Union observer delegation to MINURSO, led by Ambassador Yilma Tadesse (Ethiopia), continued to provide valuable support and cooperation to the Mission.

III. Financial aspects

21. By its resolution 56/298 of 27 June 2002, the General Assembly appropriated an amount of $43,412,900 gross to the Special Account for MINURSO for the period from 1 July 2002 to 30 June 2003, which comprised $41,529,500 for the

maintenance of the Mission, $1,681,900 for the support account for peacekeeping operations and $201,500 for the United Nations Logistics Base at Brindisi, Italy. From its inception on 29 April 1991 to 30 April 2003, the total costs of maintaining MINURSO amounted to some $495.2 million.

22. As at 30 April 2003, unpaid assessed contributions to the Special Account for MINURSO amounted to $54,452,011. The total outstanding assessed contributions for all peacekeeping operations at that date amounted to $1,375,914,354.

IV. Assessment of progress and problems since the appointment of my Personal Envoy

23. In my report to the Security Council of 20 June 2001 (S/2001/613), I described in some detail the difficulties that the United Nations had encountered over the past 11 years in its effort to implement the settlement plan (S/21360 and S/22464 and Corr.1). Despite those efforts, the process of identifying voters for the referendum broke down repeatedly. After a particularly long impasse, from the end of 1995 to the beginning of 1997, I appointed James A. Baker III as my Personal Envoy in March 1997, and asked him to assess, in consultation with the parties, the implementability of the plan in its present form and to examine whether there were adjustments acceptable to the parties that would significantly improve the chances of implementing it in the near future and, if not, to advise me on other possible ways of resolving the conflict. Following a tour of the region, during which my Personal Envoy met with the leadership of the two parties and the neighbouring countries, he informed me that, despite the difficulties and delays in the process, neither side had indicated a willingness to pursue any political solution other than the implementation of the settlement plan.

24. My Personal Envoy believed that the only realistic way to assess the feasibility of implementing the plan would be by arranging direct talks between the parties. He was aware, however, that previous efforts by the United Nations to organize such direct talks had not succeeded, mainly because of the reluctance of the Government of Morocco to meet face-to-face with the Frente POLISARIO.

25. At the invitation of my Personal Envoy, the parties met in Lisbon on 23 June 1997, marking the first time in many years that they had met to discuss matters of substance. The meeting lasted only one day, as it became apparent that both sides had difficulties accepting the proposal submitted by my Personal Envoy to bridge their differences in regard to the identification process, and that both needed to consult with their principals before responding. This was to become a pattern, repeated during three subsequent rounds of direct talks held in 1997, reflecting the parties' great reluctance to agree to the bridging proposals aimed at resolving their differences on the issues hindering the implementation of the settlement plan. Nevertheless, through the perseverance of my Personal Envoy and his team, agreement was reached on all the issues where problems existed in the positions of the parties during the round of talks held at Houston, Texas (United States) from 14 to 16 September 1997. What became known as the "Houston accords" (S/1997/742, annex III) allowed for the resumption of the identification process and, therefore, the implementation of the settlement plan.

26. In my report of June 2001 (S/2001/613, paras. 27-29), I described the serious difficulties encountered in carrying out and concluding the identification process and enumerated the remaining key unresolved issues of the settlement plan following the conclusion of the Houston accords. The report noted that since the conclusion of the identification process at the end of 1999, MINURSO had received a total of 131,038 appeals. The appeals process promised to be even lengthier and more cumbersome and contentious than the identification process, which itself lasted for five and a half years.

27. In view of these developments, in early 2000 I asked my Personal Envoy to undertake new consultations with the parties and neighbouring countries. After a visit to the region from 8 to 11 April, my Personal Envoy informed me that another face-to-face meeting between the parties was required in order to consider persistent problems in the implementation of the settlement plan and the Houston accords, as well as to explore other possible approaches.

28. The first of three such meetings in 2000 was held in London on 14 May. Representatives of the neighbouring countries Algeria and Mauritania also attended. The meeting proved to be inconclusive in resolving the problems separating the parties. My Personal Envoy therefore invited the parties to come forward at the next meeting with concrete solutions to the multiple problems of the settlement plan to which they could both agree, or, if that was not possible, to be prepared to discuss other ways of achieving an early, durable and agreed resolution of their dispute over Western Sahara.

29. During the second meeting, held in London on 28 June, each party identified areas, mainly concerning the appeals process and the repatriation of refugees, that in its view presented difficulties with respect to the implementation of the plan. However, neither party offered any specific proposals to which both could agree in order to resolve multiple problems in the implementation of the settlement plan. At that time, my Personal Envoy indicated that, in his view, other issues remained unresolved, such as enforcement of the results of the referendum, release of prisoners of war and Western Saharan political detainees and possible problems relating to the implementation of the code of conduct for the referendum campaign.

30. My Personal Envoy also expressed concern that the parties had so far failed to negotiate these problems owing to the high level of animosity between them. In his view, neither party had shown any disposition to depart from a winner-take-all mentality or appeared willing to discuss any possible political solution in which each could achieve some, but not all, of what it wanted, allowing the other side to achieve the same. After again asking the parties for concrete proposals to bridge their differences, and again receiving no such proposals, my Personal Envoy expressed the view that the meeting, instead of achieving progress, had deepened the differences between the parties.

31. Nevertheless, my Personal Envoy considered that a political solution was achievable through direct dialogue between the parties, and asked them to meet again in order to try to arrive at a political solution. At that time he stressed to the parties that, should they agree to discuss a political solution other than the settlement plan, they would not prejudice their final positions since, according to the rules of the consultations, nothing would be agreed to until everything had been agreed.

32. The third meeting of the parties held under the auspices of my Personal Envoy was held in Berlin on 28 September 2000. During a discussion on the status of the settlement plan, the parties reiterated their positions; both, however, pledged their cooperation with the United Nations. My Personal Envoy pointed out to the parties that he had heard the same arguments and pledges of cooperation since 1997 and was therefore sceptical about their validity.

33. My Personal Envoy recalled that he had asked the parties whether they had come with new positions on any issue. Neither party had presented any new positions on any issue, so he felt that there was no political will on either side to move forward. At the same time, he reiterated that there were many ways to achieve self-determination. It could be achieved through war or revolution; it could be achieved through elections, but this required good will; or it could be achieved through agreement, as had been done by parties to other disputes. When asked by my Personal Envoy whether they would be willing to try the latter route without abandoning the settlement plan, both parties reiterated their commitment to the plan, although they expressed fundamental differences and perceptions as to its correct implementation.

34. My Personal Envoy then suggested that the parties explore ways to move the appeals process forward, as the Frente POLISARIO wished, and at the same time search for a mutually acceptable political solution, as the Security Council had requested in its resolution 1309 (2000) of 25 July 2000. The Moroccan delegation pointed out that the question of appeals had been extensively covered and was exhausted. In the view of Morocco, that issue was deadlocked, not on technicalities, but on principles.

35. My Personal Envoy then asked the parties whether, without abandoning the settlement plan, they would be willing to pursue a political solution that might or might not be confirmed by a later referendum. The Frente POLISARIO responded that it was not ready to discuss anything outside the settlement plan. For its part, the Moroccan delegation stated that it was prepared to initiate a sincere and frank dialogue with the Frente POLISARIO, with the assistance of my Personal Envoy, to work out a lasting and definitive solution that would take account of the sovereignty and territorial integrity of Morocco, as well as the specifics of the region, in compliance with the democratic and decentralization principles that Morocco wished to develop and apply, beginning with the Sahara region.

36. The Frente POLISARIO rejected the Moroccan proposal and reiterated that it would cooperate and pursue dialogue only in the context of the settlement plan.

37. At the conclusion of these consultations, my Personal Envoy expressed the view, which I shared, that further meetings of the parties to seek a political solution could not succeed, and indeed could be counterproductive, unless the Government of Morocco, as the administrative power in Western Sahara, was prepared to offer or support some devolution of governmental authority for all inhabitants and former inhabitants of the Territory that would be genuine, substantial and in keeping with international norms.

38. In early 2001 my Personal Envoy was able to determine that Morocco, as the administrative power in Western Sahara, was prepared to support a draft framework agreement on the status of Western Sahara (see S/2001/613, annex I), which envisaged a devolution of authority to the inhabitants of the Territory with final

status to be determined by a referendum five years later. Once he ascertained the willingness of the Government of Morocco to support the draft framework agreement, my Personal Envoy presented it to the Government of Algeria and to the Frente POLISARIO, which provided their views on the agreement (ibid., annexes II and IV).

39. In view of the strong reservations expressed by the Government of Algeria and the unwillingness of the Frente POLISARIO to consider the draft framework agreement, the Security Council, in its resolution 1359 (2001) of 29 June 2001, supported my proposal to invite all the parties to meet directly or through proximity talks under the auspices of my Personal Envoy to discuss the framework agreement and to negotiate any specific changes that they would like to see in it. The Council also encouraged the parties to discuss any other proposal for a political solution that might be put forward by them to arrive at a mutually acceptable agreement. The Council affirmed that, while such discussions went on, the proposals submitted by the Frente POLISARIO to overcome the obstacles preventing implementation of the settlement plan would be considered.

40. As recounted in my reports of 10 January (S/2002/41) and 19 February 2002 (S/2002/178), following the adoption of resolution 1359 (2001) my Personal Envoy met with high-level representatives of the Frente POLISARIO and the Governments of Algeria and Mauritania at Pinedale, Wyoming (United States), in August 2001. Neither the Government of Algeria nor the Frente POLISARIO was willing to engage in a detailed discussion of the draft framework agreement, notwithstanding indications of flexibility by the Government of Morocco conveyed to them by my Personal Envoy. In view of the responses received from the Government of Algeria and the Frente POLISARIO, in which they rejected the draft framework agreement (S/2002/41, annexes I and II), my Personal Envoy did not see any real likelihood that the parties would ultimately agree voluntarily to this approach to solving their dispute over Western Sahara. He was also of the view, which I shared, that the proposal submitted by Algeria in lieu of the draft framework agreement, by which the United Nations would assume sovereignty over Western Sahara in order to implement provisions that appeared identical to those of the settlement plan, had no more chance than the settlement plan of bringing about an early, durable and agreed resolution of the conflict over Western Sahara.

41. Subsequently, my Personal Envoy met with President Abdelaziz Bouteflika and other high-level officials of the Government of Algeria on 2 November 2001 at the James Baker Institute in Houston, Texas (United States) and then twice with King Mohammed VI and high-level officials of the Moroccan Government in Morocco on 24 and 25 January 2002.

42. As indicated in my reports of June 2001 (S/2001/613) and February 2002 (S/2002/178), my Personal Envoy is of the view — based on his assessment of United Nations efforts over the past 11 years to implement the settlement plan, including the 6 years during which he has been involved in the process — that it is highly unlikely that the settlement plan can be implemented in its present form in a way that will bring about an early, durable and agreed resolution of the dispute over Western Sahara.

43. Owing to the parties' incompatible positions with respect to the possibility of negotiating changes in the draft framework agreement, which was favoured by Morocco, or the proposal to divide the Territory, which was favoured by Algeria and

the Frente POLISARIO, I presented four options, which would not have required the concurrence of the parties, which the Security Council could consider in addressing the conflict over Western Sahara (see S/2002/178).

44. As a first option, the United Nations could have resumed its efforts to implement the settlement plan without requiring the concurrence of both parties before action could be taken. This effort would have begun with the appeals process, but, even under this non-consensual approach, the United Nations in the years ahead would have faced most of the problems and obstacles that it had faced in the preceding 10 years. In that connection, Morocco expressed its unwillingness to go forward with the settlement plan; the United Nations might not be able to hold a free and fair referendum the results of which would be accepted by both sides; and there would still be no mechanism to enforce the results of the referendum. Under this option, the Identification Commission of MINURSO would have been reinforced, and indeed the overall size of the operation would have been increased.

45. As a second option, my Personal Envoy could have undertaken to revise the draft framework agreement, taking into account the concerns expressed by the parties and others with experience in such documents. However, in that event, my Personal Envoy would not have sought the concurrence of the parties, as had been done in the past with respect to the settlement plan and the draft framework agreement. The revised framework agreement would have been submitted to the Security Council, which would then have presented it to the parties on a non-negotiable basis. If the Council had agreed to this option, the composition of MINURSO might have been reduced.

46. As a third option, the Security Council could have asked my Personal Envoy to explore with the parties one final time whether or not they were willing to discuss, under his auspices, directly or through proximity talks, a possible division of the Territory, with the understanding that nothing would be decided until everything was decided. Under this option, in the event that the parties had been unwilling or unable to agree upon a division of the Territory by 1 November 2002, my Personal Envoy would have been asked to show to the parties a proposal for division of the Territory that would also have been submitted to the Council. The Council would then have presented the proposal to the parties on a non-negotiable basis. Such an approach to a political solution would have given each party some, but not all, of what it wanted and would have followed the precedent, but not necessarily the same territorial arrangements, of the division agreed to in 1976 between Morocco and Mauritania. If the Council had chosen this option, MINURSO could have been maintained at its present size or its composition reduced.

47. As a fourth option, the Security Council could have decided to terminate MINURSO, thereby recognizing and acknowledging that after the passage of more than 11 years and the expenditure of about one-half billion dollars, the United Nations was not going to solve the problem of Western Sahara without requiring that one or both of the parties did something that they did not voluntarily agree to do.

48. The Security Council was not able to agree on any of the options. Instead, by its resolution 1429 (2002), it expressed its continued strong support for my efforts and those of my Personal Envoy to find a political solution to this long-standing dispute, and invited my Personal Envoy to pursue those efforts, taking into account the concerns expressed by the parties. The Council also expressed its readiness to consider any approach providing for self-determination that might be proposed by

me and my Personal Envoy, consulting, as appropriate, others with relevant experience. The Council also called upon the parties and the States in the region to cooperate fully with me and my Personal Envoy in that regard.

49. Pursuant to this request, my Personal Envoy, assisted by a constitutional expert, drafted a peace plan for self-determination for the people of Western Sahara (see annex II), which he presented and explained to the parties and neighbouring countries during his visit to the region from 14 to 17 January of this year. My Personal Envoy also shared the plan with members of the Security Council in early March. I believe that the peace plan provides a fair and balanced approach towards a political solution to the question of Western Sahara, providing each side some, but perhaps not all, of what it wants. It incorporates elements of the draft framework agreement that had been accepted by Morocco, as well as elements of the settlement plan and of the Houston accords, agreed to by both sides and favoured by the Frente POLISARIO. It envisages a period of transition during which there would be a division of responsibilities between the parties before the holding of a referendum for self-determination that would provide the bona fide residents of Western Sahara with an opportunity to decide their future. Unlike the settlement plan, the peace plan does not require the consent of both parties at each and every step of its implementation. The responses of the parties and neighbouring countries to the plan are provided in annex III.

V. Observations and recommendations

50. After many years of exemplary efforts by my Personal Envoy, the proposed peace plan offers what could be an optimum political solution to the conflict over Western Sahara, providing the bona fide residents of Western Sahara, following an appropriate transitional period, the opportunity to determine their own future, which, in turn, would promote peace and stability in the region and would open the way to enhanced exchanges and cooperation between the countries of the Arab Maghreb Union. By combining elements of the framework agreement, favoured by Morocco, and the settlement plan, favoured by the Frente POLISARIO, it represents a fair and balanced approach, providing each side some, but perhaps not all, of what it wants. The peace plan, therefore, represents a compromise. And, unlike the settlement plan, it does not require the consent of both parties at each and every stage of implementation.

51. The main objection of Morocco to the peace plan seems to be that in the referendum to determine the final status of Western Sahara, one of the ballot choices is independence. However, independence is also one of the two ballot choices under the settlement plan, which Morocco had accepted.

52. It is difficult to envision a political solution that, as required by Security Council resolution 1429 (2002), provides for self-determination but that nevertheless precludes the possibility of independence as one of several ballot questions. This is particularly difficult to envision given: (a) the stated commitment of Morocco to the settlement plan (wherein independence is one of two ballot choices, the other being integration with Morocco) over so many years; and (b) the inclusion in the electorate for the referendum foreseen under the peace plan of all those who have resided continuously in Western Sahara since 30 December 1999, as

opposed to only those who would be included in the voter list, which was created on the basis of the work of the Identification Commission.

53. There is one amendment to the peace plan that might assuage the concern of Morocco over the ballot for the referendum. This would be to provide a third ballot choice providing for "continuation of the division of authority set forth in article III of the peace plan", in other words, self-government or autonomy. Morocco has for some time supported the concept of self-government or autonomy as the solution to the conflict over Western Sahara. My Personal Envoy and I propose that this third ballot question be included on the ballot for the referendum on the peace plan. If none of the three ballot questions obtained a majority of votes, the one receiving the fewest votes would be eliminated and a run-off referendum would be held to allow voters to choose between the two remaining questions. If the third option, self-government or autonomy, prevailed, the electorate for future elections of the executive and legislative bodies of the Western Sahara Authority would be the bona fide residents of Western Sahara over the age of 18.

54. The chief objection of the Frente POLISARIO to the peace plan seems to be that it is not the settlement plan. The Frente POLISARIO suggests that the parties revert to the implementation of the settlement plan, with two new elements: (a) that the Identification Commission would process all 130,000 appeals, with no requirement that sheikhs participate, with the Commission's decisions to be accepted as final; and (b) that a mechanism would be added to provide for enforcement of the results of the referendum under Chapter VII of the Charter of the United Nations. However, even with these two new elements, the settlement plan would still require the parties' consent at every stage of its implementation. It is difficult to envision Morocco consenting to the proposal of the Frente POLISARIO as a way of implementing the settlement plan. As far as adding a Chapter VII mechanism to enforce the results of the referendum, it should be recalled that, following my report of February 2002 (S/2002/178), the Security Council would not choose any of the four options proposed by my Personal Envoy and me because both parties would not consent or agree to one of them. It is therefore quite unlikely that the Council would decide to enforce the result of the referendum under Chapter VII.

55. The responses of the parties also contain a number of ostensibly technical objections to the peace plan. However, when taken together, these objections suggest that the parties still lack the genuine will required to achieve a political solution to the conflict.

56. The Security Council should not exclude the possibility that it may be asked by one or both parties to support a process in which objections and/or changes to the peace plan would be negotiated between them, perhaps under the auspices of the United Nations. However, I do not believe that such an approach would be conducive to moving forward. Rather, my Personal Envoy and I believe that the parties should accept the plan as proposed. It should be recalled, in this connection, that over the six-year period of his involvement with this issue, my Personal Envoy has convened the parties nine times in four years in Portugal, the United Kingdom of Great Britain and Northern Ireland, Germany and the United States of America, usually with discouraging results.

57. After more than 11 years and an amount of assessed contributions close to $500 million, it should be acknowledged that the Security Council is not going to

solve the problem of Western Sahara without asking that one or both of the parties do something they are not otherwise prepared to do.

58. Pursuant to Security Council resolution 1429 (2002), my Personal Envoy has now developed a fifth option, "the peace plan for self-determination of the people of Western Sahara", in addition to the four that were described in my report of 19 February 2002 (S/2002/178). I recommend that the Council endorse the peace plan. It combines elements of the draft framework agreement and agreed elements of the settlement plan. It is fair and balanced and, following a transitional period of self-government, offers the bona fide residents of Western Sahara an opportunity to determine their future for themselves. The four earlier options could, of course, still be considered, but if the Council is not prepared to revisit them with a view to making a choice, I recommend that the parties be asked by the Council to agree to the peace plan and to work with the United Nations to implement it.

59. I have reluctantly come to the conclusion that unless and until the parties demonstrate their readiness to assume their own responsibilities and make the compromises necessary to reach a successful outcome to the conflict, a fresh initiative to find a solution to the question of Western Sahara is likely to suffer the same fate as the earlier ones. Accordingly, I urge the Security Council to seize this opportunity to address effectively the long-outstanding issue of Western Sahara by requesting the parties to agree to the peace plan as amended and to work with the United Nations in its implementation.

60. If the parties cannot agree on an approach for a political solution and if the Security Council is not in a position to ask them to take steps that they do not perceive to be in their own interest, despite the fact that it may clearly be in the interest of the population of Western Sahara, the Council may wish to consider whether it wishes to remain actively seized of this political process.

61. In order to give the Security Council sufficient time to reflect on its decision, I propose that the mandate of MINURSO be extended for two months, until 31 July 2003.

Annex I

Contributions to the United Nations Mission for the Referendum in Western Sahara as at 10 May 2003

	Military observers	*Force Commander*	*Troops*	*Civilian police*[a]	*Total*
Argentina	1				1
Austria	2				2
Bangladesh	8				8
China	19				19
Croatia	2				2
Egypt	19				19
El Salvador	5				5
France	25				25
Ghana	10		7	3	20
Greece	1				1
Guinea	5				5
Honduras	12				12
Hungary	7	1			8
Ireland	4				4
India				3	3
Italy	5				5
Jordan				5	5
Kenya	10				10
Malaysia	14				14
Mongolia	3				3
Nigeria	6			3	9
Norway				2	2
Pakistan	7			2	9
Poland	1				1
Portugal				4	4
Republic of Korea			20		20
Russian Federation	26				26
Senegal				3	3
Sri Lanka	2				2
Sweden				1	1
Uruguay	8				8
Total	**202**	**1**	**27**	**26**	**256**

[a] Authorized strength is 81.

Annex II

[Original: English]

Peace plan for self-determination of the people of Western Sahara

I. Purpose

1. The present peace plan for self-determination of the people of Western Sahara is an agreement by and between the Kingdom of Morocco and the Frente POLISARIO (which are the interested parties), joined by the People's Democratic Republic of Algeria and the Islamic Republic of Mauritania (which are the neighbouring countries) and the United Nations. The purpose of the plan is to achieve a political solution to the conflict in Western Sahara that provides for self-determination, as contemplated in paragraph 1 of Security Council resolution 1429 (2002), of 30 July 2002. The effective date of the plan is the date when all interested parties, neighbouring countries and the United Nations have signed it. The final status of Western Sahara shall be determined by a referendum conducted in accordance with part II of the plan. During the period between the effective date of the plan and the implementation of the results of the referendum on final status, governmental authority shall be exercised in Western Sahara in accordance with part III of the plan.

II. Self-determination referendum

2. A referendum to determine the final status of Western Sahara shall be held no earlier than four and no later than five years after the effective date of the plan. The options or ballot questions to be included in the referendum will include: (a) those previously agreed to in the settlement plan; and (b) any additional options or ballot questions agreed to by the Kingdom of Morocco and the Western Sahara Authority (as defined in para. 8 (a) below).

3. A referendum option or ballot question shall be deemed to have been adopted if it receives more than 50 per cent of the votes cast in the referendum. If more than two options or ballot questions are presented and none receives a majority of the votes cast in the first round, a second round shall be held in which the two options or ballot questions that received the most votes shall be presented to the voters.

4. The referendum shall be organized and conducted by the United Nations and monitored by international observers accredited by the United Nations.

5. Those eligible to vote in the referendum are those persons who are at least 18 years of age and: (a) who have been identified as qualified to vote by the Identification Commission of the United Nations Mission for the Referendum in Western Sahara (MINURSO), as reflected on the provisional voter list of 30 December 1999 (without giving effect to any appeals or other objections); (b) whose names appear on the repatriation list drawn up by the United Nations High Commissioner for Refugees (UNHCR) as at 31 October 2000; or (c) who have resided continuously in Western Sahara since 30 December 1999. Those eligible to

vote shall be determined by the United Nations, whose decision shall be final and without appeal.

6. The addition to the list of qualified voters of any person whose name does not appear either on the provisional voter list of 30 December 1999 or on the repatriation list drawn up by UNHCR as at 31 October 2000 can occur only if the status of that person as a continuous resident of Western Sahara since 30 December 1999 is supported by testimony from at least three credible persons and/or credible documentary evidence. The United Nations shall: (a) determine the credibility and legal sufficiency of all such testimony and other evidence; and (b) based on that testimony and other evidence, determine who is (and is not) entitled to be added to the list of qualified voters under this paragraph. These determinations by the United Nations shall be final and without appeal.

7. All interested parties and neighbouring countries agree to accept and respect the results of the referendum.

III. Authority in Western Sahara

8. Governmental authority in Western Sahara between the effective date of this plan and such time as a new government shall take office in implementation of the result of the referendum on final status shall be as set forth in this plan, and in particular in the present paragraph:

(a) The population of Western Sahara, acting through the executive, legislative and judicial bodies established under the plan — herein sometimes referred to as the Western Sahara Authority — shall be responsible for and have exclusive competence over local government, the territorial budget, taxation, economic development, internal security, law enforcement, social welfare, cultural affairs, education, commerce, transportation, agriculture, mining, fisheries, industry, environment, housing and urban development, water and electricity, roads and other basic infrastructure;

(b) Morocco shall be responsible for and have exclusive competence over foreign relations (including international agreements and conventions), national security and external defence (including the determination of borders — maritime, aerial, and terrestrial — and their protection by all appropriate means), all matters relating to the production, sale, ownership and use of weapons and explosives (except for the duly authorized use of weapons by the law enforcement authorities of the Western Sahara Authority) and the preservation of territorial integrity against secessionist attempts, whether from within or outside the Territory, provided, however, that the right to preserve territorial integrity shall not authorize any action whatsoever that would prevent, suppress, or stifle peaceful public debate, discourse or campaign activity, particularly during any election or referendum period. In addition, the flag, currency, customs, postal and telecommunication systems of Morocco shall be the same for Western Sahara. With respect to all functions described in this subparagraph, Morocco may appoint representatives to serve it in Western Sahara.

9. The authority of Morocco for the foreign relations of Western Sahara shall be exercised in consultation with the Western Sahara Authority on matters that directly affect the interests of Western Sahara. Morocco may authorize representatives of the

Authority to serve as members of the Kingdom's diplomatic delegations in international meetings concerned with economic issues and other issues of direct interest to Western Sahara.

10. The executive authority of the Western Sahara Authority shall be exercised by a Chief Executive elected by the people of Western Sahara in accordance with paragraphs 15 to 17 of the present plan. The Chief Executive may appoint such administrators as may be necessary to exercise the powers reserved to the Authority by the plan.

11. The legislative authority of the Western Sahara Authority shall be exercised by a Legislative Assembly elected by the people of Western Sahara in accordance with paragraphs 15 to 17 of the present plan. The Legislative Assembly shall be responsible for the enactment of all laws applicable in Western Sahara, with the exception of any relating to the authorities reserved to Morocco under paragraph 8 (b) above.

12. The judicial authority in Western Sahara shall be vested in a Supreme Court of Western Sahara and such other lower courts as may be established by the Western Sahara Authority. Members of the Supreme Court and lower courts shall be appointed by the Chief Executive, with the consent of the Legislative Assembly. The Supreme Court (a) shall have jurisdiction to adjudicate the compatibility of any law of Western Sahara with this plan (except any relating to the authorities reserved to Morocco by paragraph 8 (b) above, in which case the highest court of Morocco shall have that jurisdiction), and (b) shall be the final authority in interpreting the law of Western Sahara. The Supreme Court shall have the authority to declare null and void any law, regulation or other act of the Western Sahara Authority that contravenes this plan or exceeds the competence of the Authority, as provided in the plan.

13. All laws, regulations and acts of the Western Sahara Authority shall be consistent with internationally recognized human rights standards (including human rights standards in any treaties to which Morocco is a party). In no event shall human rights in Western Sahara be protected to a lesser extent than is provided for in the constitution and laws of Morocco.

14. All laws and regulations now in force in Western Sahara shall continue in force until they are amended or repealed by action of the Legislative Assembly and Chief Executive of the Western Sahara Authority, except any relating to the authorities reserved to Morocco by paragraph 8 (b) above.

15. The election for the Legislative Assembly and Chief Executive of the Western Sahara Authority shall be held within one year of the effective date of this plan. Voters shall vote separately (in a single election) for the Chief Executive and members of the Legislative Assembly, who shall hold office for a period of four years or until governmental authority in Western Sahara is changed pursuant to the final status referendum. Sole and exclusive authority over all matters relating to any and all elections and referendums called for in this plan, including their organization and conduct, shall be vested in the United Nations.

16. Those eligible to vote in the election for the Legislative Assembly and Chief Executive of the Western Sahara Authority are persons who are at least 18 years of age and whose names appear either on the provisional voter list of 30 December 1999 (without giving effect to any appeals or other objections) or on the repatriation

list drawn up by UNHCR as at 31 October 2000. Those eligible to vote shall be determined by the United Nations, whose decision shall be final and without appeal.

IV. Other matters

17. Campaigns for the election and referendum referred to in this plan shall be conducted in a manner consistent with international human rights standards and in keeping with the principles of the Code of Conduct agreed to by Morocco and the Frente POLISARIO in 1997 (the Houston accords), except where to do so would be inconsistent with this plan. In particular, the interested parties agree not to hinder the ability of persons to campaign peacefully for or against any person standing for election or any option or ballot question offered to the voters in the referendum on final status.

18. Neither Morocco nor the Western Sahara Authority may unilaterally change or abolish the status of Western Sahara, except for the adoption of such laws as may be necessary to conform to the results of the referendum on final status. No change to this plan may be made without the agreement of the King of Morocco and the Chief Executive and the Legislative Assembly of Western Sahara.

19. Immediately after the effective date of this plan, all political prisoners and prisoners of war shall be released, and the obligation of each party in this regard is not dependent upon performance by the other. The interested parties agree that they shall continue their full cooperation with relevant international bodies until the completion of the repatriation process.

20. Within 90 days after the effective date of this plan, the armed forces of Morocco and the Frente POLISARIO will be reduced, confined, contained and thereafter maintained in all respects strictly in accordance with the provisions of the 1997 Houston accords. This provision is without prejudice to the deployment of Moroccan armed forces in purely defensive positions pursuant to the responsibility of Morocco for external defence under paragraph 8 (b) above or the creation and normal functioning of law enforcement personnel in Western Sahara under the authority of the Western Sahara Authority.

21. The United Nations will assist the interested parties, in particular the Western Sahara Authority, in fulfilling their responsibilities under this plan. The Security Council undertakes to amend the name and mandate of MINURSO to enable it to assist in the implementation of this plan, in particular during the period between the plan's entry into force and the holding of the election for the Chief Executive and the Legislative Assembly of the Western Sahara Authority.

22. The Secretary-General will use his good offices to assist the interested parties in the implementation of this plan. The interested parties agree that the Secretary-General shall have the authority to interpret this plan and that in the event of any disagreement about the meaning of the plan, the Secretary-General's interpretation shall be binding on the interested parties.

23. By signing the present document, the interested parties, the neighbouring countries and the United Nations agree to the terms of the plan, effective on the date on which all of them have signed the document.

Kingdom Of Morocco

By _____

Title _____

Date _____

Frente POLISARIO

By _____

Title _____

date _____

Democratic Republic of Algeria

By _____

Title _____

Date _____

Islamic Republic of Mauritania

By _____

Title _____

Date _____

United Nations

By _____

Title _____

Date _____

Annex III

Responses of the parties and the neighbouring States to the peace plan for self-determination of the people of Western Sahara

Note verbale dated 10 March 2003 from the Permanent Mission of Morocco to the United Nations addressed to the Personal Envoy of the Secretary-General for Western Sahara

[Original: English and French]

Following the meeting of 14 January 2003 during which you presented to His Majesty your new proposal on a political solution to the issue of Western Sahara, and upon instructions of my Government, I have the honour to forward to you the enclosed document, in English and French, containing the observations of the Kingdom of Morocco on the content of the above-mentioned proposal.

I avail myself of this opportunity to pay tribute, on behalf of my Government, to your tireless and genuine efforts to assist all parties to achieve a mutually acceptable solution to this dispute.

Observations of the Kingdom of Morocco on the new proposal of James Baker entitled "peace plan for self-determination of the people of Western Sahara"

[Original: English and French]

On 14 January 2003, His Majesty King Mohammed VI received the Personal Envoy of the United Nations Secretary-General, Mr. James Baker, who provided him with a document entitled, "Peace Plan for Self-determination of the People of Western Sahara". Mr. Baker placed his action within the framework of the mission conferred upon him by the UN Security Council in its Resolution 1429 of 30 July 2002.

In paragraph 1 of that resolution, the Council "continues to support strongly the efforts of the Secretary-General and his Personal Envoy to find a political solution to this long-standing dispute, invites the Personal Envoy to pursue these efforts taking into account the concerns expressed by the parties and expresses its readiness to consider any approach which provides for self-determination that may be proposed by the Secretary-General and the Personal Envoy, consulting, as appropriate, others with relevant experience".

Mr. Baker expressed his hope that the Kingdom will study this document and convey to him its views on its content, so that he may fully satisfy the mission conferred upon him by the Security Council.

The Kingdom of Morocco has analysed the document provided to it in great depth and in a constructive spirit. In consequence, it has drawn up the following observations:

It must be recalled, from the outset, that Morocco has unceasingly sought a peaceful resolution of the dispute relating to Western Sahara within the framework of international legality. Accordingly, co-operation with MINURSO has been exemplary, and it has been provided with all the facilities for and means of accomplishing its responsibilities in the best of conditions. Since the cease-fire came into effect on 6 September 1991, peace has been maintained in the region and its inhabitants go about their daily business normally. Morocco recognises the value of the considerable efforts by MINURSO to maintain peace in the Maghreb region.

However, the other aspect of the peace plan, the referendum proposal, such as it was originally envisaged, has proven to be inapplicable as the years pass and has thus been rendered lapsed. As early as the London meeting of 14 May 2000, the Secretary-General's Personal Envoy requested the parties "to consider others ways of achieving an early, durable and agreed resolution of their dispute" (paragraph 28 of Report S/2000/461, 22

May 2000). He went on to emphasise the need for the parties to "depart from the winner-take- all mentality" and "to discuss any possible political solutions in which each could get some, but not all, of what it wanted and allow the other side to do the same" (paragraph 30 of Report S/2002/178, 19 February 2002).

While calling on the parties to continue their direct talks, the Security Council also requested them "to try to agree upon a mutually acceptable political solution to their dispute over Western Sahara" (Resolution 1309, 26 July 2000).

During the following meeting organised between the parties in Berlin, from 28 to 29 September 2000, the Kingdom of Morocco responded positively to the request of the Personal Envoy and the recommendation of the Security Council, by agreeing to commit itself in the search for a political solution.

At that time, the Moroccan delegation insisted, for the sake of clarity, on specifying the extent of its commitment to a "lasting and definitive solution, that would take account of Morocco's sovereignty and territorial integrity, and the specifics of the region, in compliance with the democratic and decentralization principles that Morocco wished to develop and apply, beginning with the Sahara region" (paragraph 15 of Report S/2000/1029, 25 October 2000).

Morocco wishes to solemnly reaffirm its willingness to co-operate with the Security Council, the Secretary-General and his Personal Envoy in order to progress towards a political solution. Of course, this requires a compromise solution which diverges from the preceding approach set out in the Settlement Plan, which envisaged a referendum presenting the sole options of integration or independence, thus leaving, in the final analysis, a winner and a loser.

Whereas the Council required the Personal Envoy to propose a political solution providing for self-determination, international practice clearly shows that democratic consultation concerning the status of a territory, as negotiated between the parties, is a valid means of allowing a population to achieve self-determination. This practice is based on General Assembly Resolution 1541 (XV) of December 15th, 1960 and on the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, annexed to General Assembly Resolution 2625 (XXV) of 24th October 1970, which, states that the options of independence, association or integration, as well as "the emergence into any other

political status freely determined by a people constitute modes of implementing the right of self-determination by that people".

Indeed, many disputes throughout the world, since the Aaland Island case in 1920, under the League of Nations auspices (Report of the International Committee of Jurists to the League of Nations Council, LNOJ Sp.Supp. no.3 [1920], 5 September 1920, at 286), have been resolved by the granting of autonomous status within the existing State structure. Negotiation remains the privileged means for the parties to adapt this autonomy to their aims and to regional characteristics. The attainment of such self-determination would fall squarely within the democratic, decentralised nature of the Moroccan State as a whole. In addition, it is the best guaranty of respect for the fundamental human rights recognised by the Moroccan Constitution and upheld by the international commitments of the Kingdom.

It was in this context that, according to its final provisions, the "Framework Agreement on the Status of Western Sahara" proposed by the Personal Envoy in June 2001 was to be submitted according to its final provision to popular approval by referendum (Annex I to Report S/2001/613, 20 June 2001).

In accordance with its firm commitment to a political solution of the dispute, Morocco had accepted this agreement as the basis for negotiations. It should be recalled, however, that even before initiating the Framework Agreement, the Personal Envoy expressed his belief that "substantial progress has been made towards determining whether the Government of Morocco as the administrative power in Western Sahara is prepared to offer or support some devolution of authority for all inhabitants and former inhabitants of the territory that is genuine, substantial and in keeping with international norms" (paragraph 19 of Report S/2001/398, 24 April 2001).

It is in this spirit that the Council has taken into consideration the Framework Agreement which "would provide for a substantial devolution of authority, which does not foreclose self-determination, and which indeed provides for it" (Resolution 1359, 29 June 2001).

The search for a political solution, or the so-called "third way", was based, from the outset, on devolution by the Kingdom of Morocco of strictly enumerated legal powers to a decentralised authority, thus allowing it to manage its own local affairs.

The Kingdom appreciates the unceasing, and commendable efforts by the Personal Envoy to satisfy the determination of the Security Council "to assist the parties to achieve

a just, lasting and mutually acceptable political solution, which would be of benefit to the Maghreb region" (Resolution 1429, 30 July 2002).

However, to ensure the success of these efforts, it would be desirable to avoid any confusion between this political solution, or "third way", and the Settlement Plan.

Morocco made its position perfectly clear on this subject during the discussions between the members of the Security Council preceding the adoption of Resolution 1429 on 30 July 2002. Indeed, when an amendment was presented requiring the political solution to be drawn from a mixture of the Framework Agreement and the Settlement Plan, Morocco sent a letter to the President of the Security Council pointing out that, "To the extent that it sets out to amalgamate two irreconcilable options, this approach is doomed to failure" (Letter S/2002/832, 25 July 2002). The Council did not include this amendment when adopting the final formulation of Resolution 1429 of 30 July 2002.

Morocco, which fully supports the efforts of the Personal Envoy, insists however, on re-establishing the initial architecture of the political solution: a viable alternative to the options set out in the Settlement Plan.

It is only on the basis of a sound and unambiguous understanding of the political solution, as it emerges from United Nations practice, that the success of the resolution of the dispute concerning the Sahara may be ensured.

For these reasons, its may be premature to proceed to a detailed analysis of the Personnel Envoy's propositions as long as no agreement has been reached on the exact nature of the political solution and the appropriate procedure for its implementation. However, we deem it necessary to do so in order to further the advent of a negotiated political solution.

In the light of these considerations concerning the global approach, we will now review, successively, the provisions of the proposed document.

1- The title of the document, "Peace Plan for Self-determination of the People of Western Sahara", is limited to only one element of the mandate set out in Resolution 1429, while overlooking the search for the political solution which gives sense to self-determination in the present case. As for the expression "peace plan", it does not seem appropriate for the abovementioned reasons.

According to the document, its signature by Morocco, Polisario, Algeria, Mauritania and the United Nations are the sufficient and necessary condition for its entry into force. Nevertheless, given the nature, the scope and the implications of this agreement, it would

be preferable to stipulate that it will only come into force after the fulfilment by the signatories of all procedures required by their respective legal systems.

The Kingdom of Morocco, for its part, is bound to respect Article 31 of its Constitution, under which, "Treaties likely to affect the provisions of the Constitution shall be approved in accordance with the procedures prescribed for its modification ". This is clearly the case for the proposed document, which involves substantial modifications to the status of the country's Southern provinces.

It should also be noted that Algeria is described in the proposed plan as a neighbouring country, although it was referred to as a party to the dispute in the Secretary-General's Report of 20 June 2001 (S/2001/613) and the annexed Framework Agreement.

2- If the aim of this plan is to achieve "a political solution which provides for self-determination", it is surprising to find that priority is given to the self-determination referendum, when it would have been logical to set out the underlying political solution first.

3- At the outset, it is stated that the choices available for the referendum will be those set out in the Settlement Plan, the parties being free to add other options.

One may wonder about the interest of establishing a complex political solution over some years only to find oneself, at the end of the day (very close, 4 or 5 years), back in the setting of the Settlement Plan that led to the current impasse. The dangers in such a scheme are clear. Indeed, the aim of the political solution is to favour rapprochement and conciliation at a time when the perspective of a confrontation, in a near future, over two completely opposed choices, risks compromising the establishment of the proposed local authority from the very start.

If the political solution consists, as we have reiterated, of substantial delegation of powers to a local authority, it should have been left to the partners (local and central authorities), at the very least, to determine, at the appropriate time, the details of the democratic consultation of the population.

In fact, once the parties are in agreement concerning such political solution, the agreement could be immediately submitted to the population of the territory for approval or rejection. Such approval would lead to direct implementation of the status of the territory, with all the appropriate international guaranties, whereas, the unlikely situation of rejection would mean returning to the negotiation table.

4- It is envisaged that the referendum will be organised by the United Nations and monitored by international observers accredited by the Organization. Just as it has always agreed, Morocco is prepared to co-operate closely with the United Nations for the success of the political solution. However, the conditions for intervention by the World body should be more clearly specified, including the relationship it would establish with the Kingdom of Morocco.

5- According to the document, those eligible to vote in the referendum will be composed of three categories:

a- persons identified by MINURSO and included in the provisional voter list of 30 December 1999, without giving effect to any appeals or the need to update the list for persons who now satisfy the criteria, but who were not yet 18 years old in December 1999.

b- persons included in the repatriation list drawn up by the UNHCR as at 31 October 2000. The Kingdom of Morocco wishes to note that it is difficult to make any pronouncement concerning the contents of a list of which it has received no official notification from the UNHCR.

According to unofficial sources, this list was established on the basis of testimony by persons identified by MINURSO (provisional list of 1999) about members of their families. If this were so, the list would not have sufficient legal value to be used in determining the electorate, in the absence of a census duly undertaken by the UNHCR, which the Kingdom of Morocco has been requesting constantly for years. Moreover, as this system would provide an updated MINURSO identification list for the children of those identified persons who are in Tindouf, it would discriminate against the identified persons who are in the Sahara.

c- Persons who have resided continuously in Western Sahara since 30 December 1999. The aim of this provision is to cover persons who were living in the Sahara on 30 December 1999 and who have continued to do so since then. Morocco considers that it is fair, just and in compliance with democratic practice for all residents to have the right to participate in the proposed consultation. It may, however, appear arbitrary to fix the list of residents at 30 December 1999.

Finally, it is proposed that the electoral list will be determined by the United Nations finally and without appeal. While the Kingdom has confidence in the World body, it does,

however, wish to recall that the conditions regulating the identification of voters must be clearly specified and protected by all possible guarantees of impartiality.

6- Whereas the document does not require any verification of the validity of the UNHCR repatriation list, which appears to have been established very approximately, it provides that residents as at 30 December 1999 shall only be allowed to vote if they are supported by testimony from at least three credible persons and/or credible documentary evidence. It would be for the United Nations to determine the credibility and legal sufficiency of such evidence, when finalizing the electoral list.

While Morocco reiterates its total confidence in the World body, it remains unclear how the Organization intends to make definitive decisions concerning the validity of official documentation relating to resident status in the Southern provinces.

7- To the extent that the conditions for a democratic consultation allowing the population to decide on the commonly agreed upon autonomous status have been satisfied, Morocco will fully respect the results in accordance with its traditions and convictions.

8- The provisions of the plan are intended to cover all government authority in Western Sahara from the date of its entry into force until a new "government" is formed in accordance with the results of the referendum.

From a purely technical viewpoint, one may wonder whether this does not create a legal vacuum or lacuna, given that the election of the institutions of the local authority must be achieved in the year following the effective date of the plan. What would happen to the administration of the territory and the very complex institutions which are in charge of it between the effective date of the plan and the election of the assembly and executive?

Furthermore, as the election of these new institutions cannot take place in a legal vacuum, a transitional period will be needed to ensure smooth passage from one system to the other and avoid any discontinuation in the operation of those public services which are essential to the daily life of the population.

The document globally follows the power-sharing between the Kingdom's central authorities and the local authority for Western Sahara proposed in the Framework Agreement. However, some of the exceptions that have been introduced could raise difficulties. In particular, as regards the prohibition of secessionist activities, it is proposed to make an exception for speeches and declarations during the election period. This means

that Morocco could be confronted with a propaganda campaign in favour of secession right from the election of the territory's assembly and executive, without being able to forbid activities susceptible to endanger State security and the maintenance of order. The other exception, relating to the use of arms by the local authority in law enforcement, would have to be carefully defined in order to avoid any misuse endangering the security of the country.

9- Under the terms of the document, the power of the Kingdom of Morocco in respect of "the foreign relations of Western Sahara" will be exercised in consultation with the Western Sahara authority, for all questions that directly affect that territory. It is also proposed that the Kingdom may authorise representatives of the local authority to join diplomatic delegations participating in international meetings relating to economic issues and other issues of direct interest to Western Sahara. Indeed, the representatives of a local authority may participate in such delegations, and consultations with the local authority may be envisaged when the latter is directly concerned by a particular area of the country's foreign relations. Nevertheless, the Kingdom retains exclusive responsibility for those foreign relations and, accordingly, the expression "foreign relations of Western Sahara" appearing in the document, does not seem appropriate.

10- While the Framework Agreement provided for a collegiate executive body, the proposed document confers executive power on a single person chosen directly by the population, which is likely to raise some problems for that person's relations with the assembly, the majority of which could be of an opposing political persuasion.

It is precisely in order to avoid this sort of conflictual, paralysing situation that representative systems provide for the executive to emanate from the majority in the assembly.

11- The "legislative" assembly, the number of members of and electoral system for which are not specified, will be responsible for the enactment of all laws applicable in Western Sahara, with the exception of laws enacted under the powers reserved to the Kingdom according to paragraph 8B of the plan. The document thus opts for a subsidiarity principle in favour of the local authority (all powers that are not attributed to the Kingdom would be exercised by this authority).

In so doing, the document inverts the entire logic underlying the search for a political solution by the United Nations which, as noted above, involved the Kingdom delegating some powers to the local authority. Consequently, the political solution was based on the

postulate that all powers which were not attributed to the local authority remained within the competence of the central authorities. Clearly the subsidiarity principle must take its point of departure from the delegating entity, that is the Kingdom of Morocco, which retains all powers that it has not conceded to a local delegated authority.

It should also be noted, in this respect, that the document does not set out the relation between the head of the executive power and the territory's "legislative" assembly, whether it be a question of their powers or their responsibilities. Unfortunately, this flaw makes it impossible to understand the exact mode of operation of the local authority.

12- The document places the judicial power in the context of an advanced federal model. This certainly has advantages in countries with a federal tradition, but it is difficult to apply in Morocco, a country whose judicial system is unified and centralised.

The document provides for a Supreme Court of Western Sahara and lower courts, the judges of which are to be appointed by the chief executive, with the consent of the assembly.

Yet the Moroccan legal system is under the hierarchical control of a sole Supreme Court, which is the highest level for review of the uniform application of the law by other courts.

Furthermore, justice is meted out in the name of His Majesty the King, as Protector of the rights and liberties of citizens under Article 19 of the Moroccan Constitution. He appoints judges, in consultation with the Superior Council of Magistracy, the constitutional guarantor of their independence.

Thus, the very existence of a Supreme Court of the local authority is difficult to reconcile with the Moroccan judicial system.

Moreover, the document proposes that the Supreme Court be invested with jurisdiction to adjudicate the compatibility of any "law of Western Sahara" with the plan.

Given that the judges sitting on this Court are to be designated by the executive and legislative powers of the territory, one may question the degree of independence the Court will have, in practice, to sanction any attempt by the local authority to exceed its jurisdiction.

While it is true that the Supreme Court of the Kingdom plays the same role with regard to the powers of the central authorities, this only concerns sovereign prerogatives with respect to which there is not a great deal of legislative activity. In reality, the

competence to resolve conflicts concerning power-sharing should be retained by the Supreme Court of the country, as guarantor of the unified interpretation and application of Moroccan law. Moreover, the system proposed in the document leaves aside the question of jointly held powers (taxation, finance, security and the use of arms, for example), for which one can not conceive that two Courts could have jurisdiction to adjudicate these subjects.

In sum, it is difficult to imagine introducing such disparities into the administration of justice within the Kingdom.

13- According to the proposed document, all laws, regulations and acts of the local authority must be consistent with internationally recognised human rights standards, including those set out in treaties to which the Kingdom is a party. The plan adds that the protection of human rights in Western Sahara should not be inferior to the standards set out in the Constitution and laws of Morocco.

While one can only rejoice at the introduction of such a precaution in the document, to prevent any abuses by the local authority in the field of fundamental human rights, it would have been preferable to include guarantees and to grant full powers to the Kingdom's judicial system to ensure respect for these rights.

14- It is entirely reasonable to provide for the country's existing laws and regulations to remain in force until action is taken with respect to them by the local authority, with the exception of the reserved powers of the Kingdom. However, it must be noted, yet again, that such an approach places the document in a logic of subsidiarity in favour of the local authority, which is incompatible with both United Nations practice concerning political solutions and the fundamental constitutional principles of the Kingdom, as explained above.

15- The election of the assembly and the executive must take place within one year of the effective date of the plan, which raises the question, already discussed, of managing the transitional period and the establishment of new institutions.

Furthermore, it is proposed that the United Nations will have sole and exclusive authority for the conduct of the elections and referendum. Yet, of necessity, the Organization will have to rely on the Kingdom's institutions, in order to fulfil this responsibility.

16- The election of the local authority's chief executive and assembly are to be entrusted to a limited group of voters: those who are on the provisional voter list of 30

December 1999 or the repatriation list drawn up by the UNHCR as at 31 October 2000 (subject to the questions previously raised concerning the latter list). In any case, a minority of the population is thus to elect a local authority which will administer the majority. This would create an anti-democratic situation in contradiction with the same fundamental human rights that the document requires to be fully respected. Serious problems will result from this, perhaps even leading to confrontation between two parts of the population: those who have elected the executive and legislative bodies and those who have been excluded from the electoral process.

Furthermore, the tribal structure and resulting solidarity of the territory's population cannot be ignored. It is inconceivable, therefore, that the chosen electoral system should result in the domination of one tribe by the others, the exclusion of one of them, or even a fraction of a tribe.

17- By providing that the electoral campaign must be conducted in compliance with international human rights standards, the document echoes the requirements of the Moroccan Constitution. It would be desirable, however, for judicial guarantees to be established, in particular by providing for recourse to those Moroccan courts having jurisdiction over electoral conflicts.

18- The document provides that the status of the territory cannot be changed unilaterally. However, it is hard to understand the proposed procedure for change of that status, requiring an agreement between the King of Morocco, the chief executive and the legislative assembly, as this places the country's Sovereign on the same level as the local institutions.

19- The document calls for the release of all prisoners of war and political prisoners immediately after the effective date of the plan. This provision is contrary to international humanitarian law, which requires the release of prisoners of war immediately after the cease-fire (i.e. since 1991). In addition, in paragraph 5 of Resolution 1429 of the 30 July 2002, the Security Council called upon Polisario to release without further delay all remaining prisoners of war.

International humanitarian law and United Nations practice require the dissociation of the humanitarian aspects of a dispute or conflict from its political solution.

For all these reasons, the document should simply recall the need to respect scrupulously, and at all times, the peremptory norms of humanitarian law.

20- The document provides for the cantonment of all troops 90 days after its entry into force, with the sole exception of the deployment of those Moroccan armed forces necessary to ensure the external defence of the territory. We wonder if it is not more appropriate to link such cantonment to the establishment and operation of the local authorities so as to guarantee the maintenance of order and security during the transitional period.

21- Morocco is prepared to co-operate with the United Nations for the implementation of the political solution to be agreed, when the time comes.

22- The Kingdom considers that the offer of good offices by the Secretary-General is most welcome to assist the parties in implementing the plan. However, the document states that the Secretary-General would also have binding authority to interpret the plan, finally and without appeal. The latter provision raises difficulties both in principle and at the technical level. Indeed, the Secretary-General, who will be a party to the agreement and involved in its implementation, would also be called on to interpret it, which would place him in the delicate, untenable position of being both judge and party.

It should also be noted that an interpretative role has been granted to the local and central supreme courts, in charge of reviewing laws with respect to the power-sharing proposed in the plan; this seems to be in contradiction with the functions assumed by the Secretary-General in this matter.

In conclusion, the Kingdom of Morocco warmly appreciates the laudable efforts by the Secretary-General and his Personal Envoy to assist the parties in achieving a political solution, and wishes to express its gratitude to both of them for all their efforts intended to bring the States of the Maghreb region closer together, thus enhancing their stability and progress towards unity.

The Kingdom reiterates its commitment to dialogue and negotiation, as a means of finding a peaceful and lasting solution to the dispute concerning the Sahara which fully respects the territorial integrity of the States of the Maghreb region and complies with international legality.

Letter dated 8 March 2003 from the Secretary-General of the Frente POLISARIO to the Secretary-General of the United Nations

[Original: French]

I had the honour to receive, on 16 January 2003, your Personal Envoy, Mr. James Baker III, who transmitted to me a proposal for a solution entitled "Peace Plan for self-determination for the people of Western Sahara", with a view to putting an end to the decolonization conflict which, for more than 27 years, has pitted the Saharan people against the Kingdom of Morocco.

The Frente POLISARIO, which expresses its appreciation to the United Nations, its Secretary-General and his Personal Envoy, has considered this proposal carefully. I have entrusted Mr. Mhamed Khadad, the Saharan Coordinator with the United Nations Mission for the Referendum in Western Sahara (MINURSO), with the task of transmitting to you our reply to this proposal.

I should be grateful if you would bring the full contents of this reply to the attention of the members of the Security Council at such time as you find convenient.

I wish to assure you of our determination to continue to cooperate with you and your Personal Envoy for the culmination of your efforts to arrive at a just and final solution to the conflict over Western Sahara.

(*Signed*) Mohamed **Abdelaziz**
Secretary-General of the Frente POLISARIO

On 16 January 2003, the Frente POLISARIO had the pleasure to receive Mr. James Baker III, Personal Envoy of the Secretary-General of the United Nations, who presented to it a settlement proposal entitled "Peace Plan for self-determination for the people of Western Sahara", in which he requested a reply from each of the two parties to the conflict over Western Sahara. The present document contains the reaction of the Frente POLISARIO to this proposal.

The Frente POLISARIO wishes first of all to thank the Personal Envoy of the Secretary-General of the United Nations for the patience and perseverance he has shown in investing his personal credit and talent in the efforts to arrive at a just and final settlement of the long and grievous conflict over Western Sahara by the only legal and just path with regard to decolonization, namely the Saharan people's exercise of its exclusive right to self-determination through a free and properly conducted referendum organized and monitored by the United Nations.

Similarly, the Frente POLISARIO wishes to give due credit to Mr. James Baker III, recalling that his input and efforts made it possible, within the framework of negotiations conducted with the two parties to the conflict at Lisbon, London and Houston, in 1997, to resolve all pending issues for the implementation of the United Nations Plan. The Houston agreements incorporated all these final measures that were worked out and unreservedly accepted by the Kingdom of Morocco and the Frente POLISARIO. The detailed Implementation Plan, finalized and submitted by the Secretary-General of the United Nations to the Security Council on 13 November 1997, envisaging the holding of the referendum on 7 December 1998, constitutes a further solemn confirmation of this, sealed with the authority of the Security Council.

This gratitude expressed to the Personal Envoy and this recapitulation indicate clearly the obstacles raised on the path towards a settlement of the conflict over Western Sahara. They also show the responsibility and duplicity of the Kingdom of Morocco. All that brings the fore the continuing volte-face of the occupying Power in Western Sahara, conduct which the Organization of African Unity (OAU), and then the United Nations, have had to suffer constantly, to the detriment of international law and to the detriment of their own credit.

OAU and the United Nations can also testify that Frente POLISARIO, which speaks for martyrs, exiles and Saharans faced with unspeakable suffering inside their occupied country and for a just cause, has unceasingly over the decades made successive compromises with the aim of ensuring the exercise of a fundamental right, the Saharan people's right to self-determination. These compromises began with the acceptance of, and faithful respect for, the ceasefire that came into force on 6 September 1991, in spite of the fact that this halt to the fighting was an integral element of the Settlement Plan that Morocco is constantly impeding and even challenging. What became of it? Morocco itself gives the reply: Its invasion of Western Sahara in 1975, with a savagery and barbarity unprecedented against an unarmed civilian population, its obstinacy and illegality, its expansionism and its will to gain recognition for the fait accompli of the occupation of Western Sahara.

That is not a question of polemics but of stands that have been taken by the Kingdom of Morocco and for which it must be held accountable. It is Morocco that alleges that "the international community has finally recognized its rights to the Sahara". It is Morocco that maintains that "the referendum is null and void". It is Morocco that, in short, states that it will not accept any solution to this

decolonization conflict "that does not respect its territorial integrity and national sovereignty".

By recalling all this, the Frente POLISARIO is not indulging in statements that might be perceived as inappropriate in response to a proposal submitted to it with peace as the goal. It simply seeks to place that proposal in its essential context: that of an illegal occupation inasmuch as Morocco, which has never given its word on the subject except to retract it subsequently, producing only obstacles and complications.

The Frente POLISARIO sees clearly that, since November 1999, the United Nations has been trying to counter Moroccan duplicity with the search for a "political solution", the ultimate step of which is still the referendum on self-determination, while confirming the validity of the settlement plan and acknowledging the difficulties still encompassing its implementation.

The Saharan people and the Frente POLISARIO, which speaks on its behalf, believe that they are entitled to expect of the United Nations that the necessary and adequate conditions and guarantees be provided to ensure that the triumph of the right of peoples to self-determination is safeguarded, in Western Sahara, against new Moroccan volte-face and that the return of the Saharan people to its Territory to exercise its right to self-determination is not a gathering to endorse, through its own participation, the integration of its country in the occupying Power, or, even less, a return of its repression, massacre and suffocation.

Taking all these factors into consideration, the Frente POLISARIO has considered carefully the proposal of Mr. James Baker III based on Security Council resolution 1429 (2002) of 30 July 2002.

In the course of this careful consideration, Frente POLISARIO has noted that the Personal Envoy has endeavoured to take account of some of the "concerns expressed by the parties". However, it has also sought to analyse the proposal in the light of the volte-face and obstacles that the Kingdom of Morocco has already placed in the way of previous plans and agreements after duly accepting them.

Accordingly, Frente POLISARIO wishes to make the following remarks and comments on Mr. James Baker III's proposal entitled "Peace Plan for self-determination for the people of Western Sahara".

1. It is provided (para. 15) that: "The election for the Legislative Assembly and Chief Executive of WSA [Western Sahara Authority] shall be held within one year of the effective date of this Plan". However, the concept of this one-year period is encompassed with solemn and weighty silences, except for some brief indications regarding the issues of prisoners, the troops of the two parties and refugees (paras. 19, 20 and 21).

Need it be recalled that this period is supposed to see the return of the Saharan refugees to the Territory? Need it be recalled also that the United Nations is supposed to exercise its exclusive authority in the election of WSA? Lastly, need it be recalled that the Settlement Plan, supplemented by the Houston agreements and translated into detailed measures by the Secretary-General on 13 November 1997, defines clearly and precisely the body of provisions that should govern the transition period.

Accordingly, through these solemn silences regarding the one-year period preceding the election of WSA, there is a risk that the proposal might — quite contrary to the will of its author — set a real trap for Saharan refugees on return to their illegally occupied country.

Without adequate guarantees and protection from the United Nations, through, inter alia, the engagement of its own authority in the occupied Territory, many previous experiences (such as Rwanda and Timor) confirm in advance that the above-mentioned one-year period will be the occasion of a mass repression of Saharans and a blemish on the name of the United Nations itself. Moreover, the Moroccan repression to which Saharans in the occupied part of the Territory continue to be subjected, in spite of the presence of MINURSO since 1991, is a further proof of the serious dangers ahead.

2. With regard to the release of political prisoners and prisoners of war (para. 19), the proposal omits to raise the question of the responsibility of either party should it evade its obligations. We are all aware that Morocco persists in refusing to provide any information to the International Committee of the Red Cross regarding the fate of the Saharans held in its jails. Does that mean that the United Nations thereby intends to forget those detainees and prisoners and to release the occupier from its serious responsibilities in this regard?

3. With regard to the repatriation of refugees (para. 19), the proposal restricts itself to stipulating that: "The interested parties agree that they shall continue their full cooperation with relevant international bodies until the completion of the repatriation process". However, by undertaking to assume full responsibility for the referendum, the United Nations undertakes to assume primary responsibility for the protection and security of, and assistance to, refugees. That was formally agreed and specified in the Settlement Plan, with the agreement of the two parties. The relevant provisions were set forth in paragraphs 22 to 28 of the detailed Plan submitted by the Secretary-General to the Security Council (report contained in document S/1997/882). Renouncing those provisions or even ignoring them would mean exposing the refugees to serious danger upon repatriation without protection and during resettlement without security guaranteed by MINURSO and without the anticipated assistance from the United Nations High Commissioner for Refugees.

4. With regard to the provisions applicable to the troops of the two parties (para. 20), the proposal provides that these would be the measures to reduce, confine and contain them envisaged in the Settlement Plan, as supplemented by the Houston agreements. This gives rise to some major questions, including the following:

(a) Does this mean that the 65,000 Moroccan troops intended, under the Settlement Plan, to be kept contained and monitored by MINURSO (for a period of six months prior to the referendum) would henceforth be scheduled to remain in Western Sahara for more than four years? Logic and fairness would demand that almost all of these 65,000 men be withdrawn from Western Sahara in order to remove a serious threat;

(b) Does this mean that the United Nations intends at the very least to maintain the military unit of MINURSO in its entirety (almost 2,000 men) in Western Sahara for almost four years so that it can ensure observance of the

containment and monitoring provisions already agreed on in the Settlement Plan and accepted by the two parties?

In fact, the very logic of the proposal which (para. 8) provides for the powers of WSA in the context of the exercise of "governmental authority", must lead to the withdrawal of practically all of the Moroccan troops still in Western Sahara upon the establishment of WSA.

5. With regard to MINURSO, paragraph 21 of the Plan provides for amending its name and mandate "to enable it to assist in implementation of this Plan, in particular during the period between the Plan's entry into force and the holding of the election of WSA". This statement gives considerable cause for concern, because it would appear to indicate the abdication by the United Nations of its responsibilities in the Territory for a period of four years, thus setting the stage for a potentially lethal confrontation between Western Saharans and the Moroccan occupier.

It bears recalling at this point that, in accordance with its own Charter, the United Nations remains committed to the non-self-governing Territory of Western Sahara. Moreover, the mere fact that the proposal itself outlines a process the final phase of which is a referendum exclusively organized and monitored by the United Nations to determine the final status of the Territory, should in all logic require the presence of the Special Representative and MINURSO under the mandates given to them by the Settlement Plan supplemented by the Houston agreements, mandates that provide not only for the prevention of any escalation of the conflict and derailment of the plan, but also, and more importantly, for the continuing protection of the population of the Western Sahara until the implementation of the final result of the referendum.

6. After the WSA election, the proposal provides for another period of transition of no less than three and no longer than four years. The evidence at hand raises a concern as to why the reasons for this inordinately long period are not specified.

7. The arrangements envisaged for this three- or four-year period are based on two legally inadmissible postulates. Indeed, Morocco is an occupying Power in the Western Sahara and not an administering power. Its sovereignty over the Territory is not recognized and the proposal itself confirms this, since its aim is to hold elections on the final status of the Territory. Consequently:

(a) Morocco cannot be responsible for the foreign relations of a territory over which the international community has never recognized its sovereignty;

(b) The occupying Power cannot conclude agreements or conventions that are binding on the Western Sahara or involve its resources, as confirmed by the Legal Counsel of the United Nations in his opinion of 29 January 2002;

(c) Nor can Morocco determine the international borders of the Western Sahara established by treaties signed between Spain, the administering Power in the Western Sahara, and France, then administering Power in Algeria, Mauritania and Morocco, neighbouring countries of the Western Sahara, and deposited with the United Nations.

8. The proposal intends to confer on WSA powers to exercise governmental authority over the territory of the Western Sahara. It therefore leads to the establishment, by the Western Sahara Authority, of an appropriate administration.

This therefore presupposes the dismantling of the occupying administration in all areas that fall under the remit of WSA. This dismantling/establishment exercise should proceed peacefully and in accordance with the agreement that is supposed to have been signed.

It also follows that MINURSO and the Special Representative should supervise the transition.

Lastly, the foregoing also implies the transfer to WSA of the power to issue titles and documents such as deeds for state ownership, residence and settlement permits, civil-status documents and decisions.

9. The proposal also confers on WSA competence over taxation and economic development, including mining and fisheries. This implies halting the plunder by the Moroccan occupying Power of the natural resources (phosphates and fisheries) of Western Sahara and ensuring that such resources belong exclusively to the Territory and its people, yet the proposal does not make any specific provision to that end.

10. Similarly, since WSA is considered to have competence over education and culture, that should imply that it has the right to teach the languages it wants, to guarantee the freedom of worship and to lay down principles governing society and the institutions, including the right to do justice on behalf of the people.

11. The proposal also confers on WSA competence over internal security and the maintenance of law and order. In some cases, such as the fight against transnational crime, drug trafficking, money-laundering or terrorism, competence over internal security should lead to cooperation at the international level between the WSA police and the police forces of other states or bodies (such as Interpol). However, in this regard, the exclusive competence over foreign relations that the proposal intends to confer on Morocco would be a serious obstacle.

12. The proposal confers on Morocco, the occupier, jurisdiction that is at times vague. Thus, at this stage, nothing prevents Morocco from claiming the right to draft Saharans into the ranks of its army of occupation, a situation whose ludicrousness is there for all to see.

13. The proposal intends to grant to Morocco the right to conserve the trappings of its sovereignty over the Western Sahara, including the flag, currency and stamps. Such a situation would have been conceivable within the framework of specific autonomy agreed under a sovereign State. However, it is inconceivable in non-autonomous, illegally occupied Western Sahara for which the proposal itself suggests a solution aimed at deciding on the final status of the Territory. Accepting the Moroccan flag, currency and stamps in the Western Sahara is tantamount to giving in to the colonizer's claim that it has sovereignty over the Territory.

14. By deeming it necessary to make Morocco responsible for customs in the Western Sahara, the proposal would seriously call into question the economic powers of WSA. Indeed, such situation would have an advance impact in terms of restrictions on imports and exports and the diversion of customs revenues and duties to the detriment of the Western Saharan economy.

15. By envisaging granting to Morocco (whose police practices are well known) the administration of posts and telecommunications, the proposal threatens respect for the universal principle of freedom and the privacy of communications and correspondence. This would be tantamount to calling basic human rights into question, to the detriment of Saharans.

16. The proposal has remained silent on the free movement of goods and persons to and from the Western Sahara. This proposal calls into question the universal principle of freedom of movement, which is also contained in the Settlement Plan and the Houston agreements. Furthermore, the powers envisaged by Morocco with regard to combating any secessionist attempts would undoubtedly result in the people of Western Sahara being locked up in a ghetto of oppression.

17. The proposal fails to stipulate the right of foreigners, especially non-governmental organizations and the media, to have free access to the Western Sahara. Moreover, making the occupier, Morocco, responsible for the Territory's external security would result in granting it the right to censure the entry of foreigners into the Western Sahara. That is why the proposal should have granted only to the services of the United Nations the power to issue entry visas into the Territory.

18. The proposal intends to give Morocco exclusive competence over "*all matters relating to the production, sale, ownership, or use of weapons or explosives*". That is a "*legal*" basis which would be established in favour of the occupying Power, which it could use to arm "death squads" with a view to establishing a bloody chaos in the Western Sahara of which the designated victim in advance would be the Saharan people.

Let us also note that the proposal is silent on a universal principle of law, namely, that any activity undertaken by the police must necessarily be subject to monitoring by the magistrate with jurisdiction over the Territory and therefore by the courts that are supposed to be established in the Western Sahara.

19. It should be pointed out that the proposal's intention to confer on Morocco the right to preserve the Territory against secessionist attempts is a serious juridical shift and a blatant anomaly.

It is indeed a grave legal anomaly because any mention of "secession" carries an implication of "territorial integrity". This, of course, is Morocco's colonialist argument; however, such "territorial integrity" is not recognized by the international community and the Saharan people, for its part, has challenged it through its legitimate national liberation struggle. Furthermore, the proposal rejects Morocco's territorial integrity in the Western Sahara, since it is supposed to lead to a referendum on the final status of the Western Sahara.

Furthermore, it is also a blatant anomaly because the proposal in its conception assumes that the Frente POLISARIO would have accepted the arrangement put forward and that the Saharawi People's Liberation Army would be reduced and contained under the supervision of MINURSO. That being the case, where would any "secessionist attempts" come from?

Such a provision would be tantamount to suppressing for three or four years the right of the Saharan people to foster peacefully and democratically, and not only during electoral campaigns, their demand for independence, for which they are still

fighting, even while the option of independence naturally still remains one of the options to be decided upon following a free and fair referendum.

20. The proposal intends to establish a judicial authority appointed by WSA in the Western Sahara. At the same time, it gives the highest court of Morocco "*jurisdiction to adjudicate the compatibility of any law reserved to the Kingdom*". This constitutes unprecedented dual judicial authority over a colonial Territory, without even the arbitration of third party judges representing the United Nations. Its initial effect would be to seriously weaken the powers conferred on the WSA legislative assembly.

The second dangerous consequence of this approach in practice would most probably be that Saharans detained for questioning by the Moroccan security services for attempted secession would be subject to Morocco's special courts. In a nutshell, the occupation and repression of Saharan nationalism would continue, as under the current occupation; such repression would probably be more savage and ferocious, especially with its "validation" by a United Nations sponsored peace plan.

21. Concerning the final referendum on the final status of the Western Sahara, and despite the begging of the question concerning its monitoring by the United Nations (paras. 4 and 15),the process still remains, on the issue of the electorate, marked by a certain unfairness towards the Saharan people and by contradictions in terms of its approach; it is also a fresh source of complications.

(a) Thus, the contents of paragraphs 5 and 6, describing the three components of the electorate (namely, the Saharans already identified, Saharan refugees and the Moroccan settlers) takes the entire process back to the original and ongoing complications concerning the issue of those eligible to vote in the referendum.

Indeed, the United Nations itself admits that for 10 years the implementation of the settlement plan was hampered by the difficulty in resolving the identification issue.

However, by providing for the identification of a new category of voters (the "*residents*") the United Nations would be heading for a new controversy and a deadlock of the proposed process.

(b) Furthermore, the provisions concerning the counting of "*residents on the list of qualified voters*" clearly contain some contradictions.

It is stated, on the one hand, that it is the United Nations, "*whose decision shall be final and without appeal*", which will be responsible for this census. On the other hand, it is indicated that the United Nations shall base its action to that end on "*testimony from at least three credible persons and/or credible documentary evidence*".

By proceeding thus, Morocco will have the exclusive privilege of claiming the right to vote for its nationals, also providing witnesses and, of course, providing documents. Thus, the proposal would embark the United Nations on yet another open-ended process of identification with the introduction of complications by Morocco, which is to blame for the ongoing deadlock of the settlement plan, precisely with respect to the issue of identification.

It bears recalling at this point that the United Nations Peace Plan accepted by the two parties and endorsed by the Security Council set forth in 1988, when it was initially drafted, and in April 1991 in its final version, that the 74,000 Saharans counted by Spain, the administering Power, constituted the electorate body for the referendum.

Let us also recall that the delaying tactics by Morocco have been as consistent as public on the issue of identification as indicated by the following:

- Its submission to the United Nations as far back as July 1991 of two additional lists of 76,000 and 45,000 Saharans, respectively;

- Its second "Green March" of 17 September 1991 (following the entry into force of the ceasefire of 6 September 1991) getting 170,000 Moroccans to go to the identification commission in the Western Sahara;

- Its third "Green March" of 12 January 1998 (following the Houston agreements, which supported the eligibility criteria, and some weeks after the adoption of the Secretary-General's detailed plan of 13 November 1997 for the holding of the 7 December 1998 referendum) that brought an initial contingent of 50,000 Moroccans to the Western Sahara to be "identified";

- Its lodging of 131,000 appeals in February 2000 (relating to individuals already ruled out by the Identification Commission) to force the United Nations to accept them as voters immediately following the publication of the provisional list of the identification commission on 30 December 1991 and despite Security Council resolutions 1238 (14 May 1999) and 1263 (13 September 1999) by which the Council had appealed to the two parties not to turn the appeals process into a second round of identification.

Lastly, let us recall that in each of the above-mentioned instances the United Nations caved in without succeeding in stopping Morocco's manoeuvres. Thus:

- The entry of 170,000 more Moroccans into the Western Sahara in September 1991 was followed by a revision of the identification criteria that had already been established;

- The entry of 50,000 more Moroccans into the Western Sahara in January 1998 resulted in the calling into question of the identification modalities agreed upon and accepted under the Houston agreements and in the drafting by the Secretary-General of the United Nations of five additional protocols relating to appeals in May 1999;

- Lastly, the publication by the United Nations in December 1999 of the list of identified voters (86,425 persons) was followed by the submission by Morocco of 131,000 appeals concerning cases that had all been already considered and rejected by the United Nations Identification Commission. That resulted in a deadlock in the identification process and brought the implementation of the Settlement Plan to a standstill.

(c) Lastly, the composition of the electorate envisaged under the proposal is both unfair and fatal to the Saharan people:

- It is unfair because the fate of the colonized Saharan Territory would be determined through a referendum in which 86,425 Saharans and (if we were to

confine ourselves to the above-mentioned facts) Moroccan settlers four to five times that number would participate;

- It is fatal because the Saharan refugees would be returning to the Western Sahara, to a situation fraught with uncertainty, to be trapped there by the colonizer who would then block once again the process around the "residents" issue and would embark on as brutal a repression as it did in 1975, when it even used napalm against civilians fleeing from the occupation. Not even the Nazis behaved that way when they invaded neighbouring countries of Germany.

22. Furthermore, the proposal does not contain any provisions banning any fresh and massive movement of Moroccans to the Western Sahara. By failing to do so, the four to five years between the entry into force of the proposed plan and the final referendum, will provide ample opportunities for new "green marches", a method used by Morocco to invade the Western Sahara and sustain its occupation of the Territory over the years.

23. The proposal offers no guarantees as to the respect for the results of the proposed referendum, should it lead to independence. It is definitely not the commitment of the interested parties (para. 9) which could be mistaken for an effective guarantee. Such undertakings were made by Morocco in 1988 and 1991 (under the Settlement Plan), then in September 1997 at Houston and in November 1997 at the adoption of the detailed implementation Plan by the Security Council. We all know what happened.

Moreover, it was the Secretary-General himself who stated in his report of 19 February 2002 (para. 48) that "*the United Nations might not be able to hold a free and fair referendum whose results would be accepted by both sides, and there would still be no mechanism to enforce the results of the referendum*". That should even have provided grounds for including in the proposal sufficient guarantees including through the role of MINURSO and the Special Representative and prior commitments by the Secretary-General and the Security Council to ensure that the results of the referendum would be respected.

24. The agreement contained in the Special Envoy's proposal breaks new ground by introducing a novel idea in the field of agreements.

The document states (para. 1) that the Peace Plan "*is an agreement by and between the Kingdom of Morocco and the Frente POLISARIO*". In its articles 17 and 19, it refers once again to the Frente POLISARIO for the purposes of settling the fate of the Saharawi People's Liberation Army and reaffirming the Code of Conduct. The proposal makes the Frente POLISARIO one of the five signatories to the "*Agreement*". However, the Frente POLISARIO does not appear anywhere else in the other 20 pages of the document (unlike Morocco, which is a subject or actor in all phases of the proposed process).

Does the foregoing mean that the Frente POLISARIO would be restricted to the status of a signatory on behalf of the Saharan people but without any further role to play in meeting the commitments it will have undertaken or even as a petitioner for any violations of the Agreement? Would it also mean that the Frente POLISARIO would be stripped of its responsibility for waging a political and peaceful campaign for independence, the very reason why it was appointed as a

representative of the Saharan people and for which it has been accepted for decades by the international community, including the United Nations, as interlocutor?

The Frente POLISARIO is a democratic movement and would therefore bear no grudges in seeing genuine Saharans setting up institutions and especially deciding on the future of the Western Sahara.

However, the Frente POLISARIO is also a key partner when it comes to reaching agreement on the terms of any just and final settlement to the conflict. It is therefore also a key partner in the conclusion, implementation and observance of any settlement plan. The proposal should have taken this fact into account and prevented a serious omission.

All the foregoing shows that the Frente POLISARIO is not using delaying tactics nor engaging in evasive manoeuvres to stall the peace efforts of the United Nations.

A just and lasting peace is what is sought by the Saharan people, part of whose country is under occupation, a situation that has forced some of them into a painful exile for 27 years.

The quest for peace through genuine self-determination for the Saharan people is the reason for the many concessions that the Frente POLISARIO has willingly made on behalf of the Saharans, from the unilateral cessation of hostilities (1990) to the ceasefire (1991) and various successive agreements already made with regard to identification criteria. Furthermore, the successive liberation of prisoners of war (a vital component of the Settlement Plan) gives further proof of the Frente POLISARIO's desire for peace.

As for the other party, the occupier Morocco, its only good point has been to constantly proclaim openly, since 1975, that only a "*confirmatory*" referendum would be held and that the only solution would be one that is "*in accordance with its territorial integrity and national sovereignty*".

The comments made by the Frente POLISARIO on the Personal Envoy's proposal are meant to bring out its inconsistencies, the serious obstacles it is putting in the way of the efforts suggested by the United Nations and the grave danger it poses to the security and legitimate and inalienable right of the Saharan people to freely decide on its future and that of its own country.

It is in that same spirit and as proof of both the good will and desire of the Saharan people to ensure that the United Nations efforts result in the satisfaction of its own right to self-determination that the Frente POLISARIO is submitting to the Special Envoy, and through him to the United Nations, a proposal which represents a major sacrifice and a major concession.

The aim of this new proposal is to:

- Resolve the long-standing issue of voter identification;
- Reduce the time frame and costs of implementation of the Settlement Plan;
- Uphold the guarantees of impartiality already accepted by the two parties without challenge;
- And put in place guarantees that the results of the referendum will be respected.

To that end, the Frente POLISARIO proposes:

(1) That in order to overcome the deadlock with regard to identification, the United Nations should decide that the electorate should consist of:

(a) The individuals whose names are on the provisional voter lists established by the Identification Commission on 30 December 1999;

(b) The results produced by the Identification Commission following the impartial, rigorous and transparent consideration of the appeals lodged, nearly all of them by Morocco, and recorded by the Identification Commission; such consideration would be conducted with or without the participation of the "*chioukh*" and its decisions should be final and without appeal;

(c) Such identification, which would take some weeks to finalize, should be completed before the transitional period begins.

(2) Once the identification has been completed, the Settlement Plan supplemented by the Houston agreements would be implemented in accordance with the detailed plan contained in the Secretary-General's report dated 13 November 1997 (S/1997/882).

(3) In order to guarantee respect for the results of the referendum, the Secretary-General and the Security Council would make a commitment in advance to ensuring respect for the outcome of the referendum organized and monitored by the United Nations, the operational mechanism for that purpose being the Special Representative and MINURSO.

The Frente POLISARIO hopes that this new proposal closes all loopholes for delaying tactics: the issue of voter identification would be decided by the United Nations on the basis of information (the appeals) already in its possession. All the other provisions of the Settlement Plan supplemented by the Houston agreements were not challenged by any of the parties.

The Frente POLISARIO hopes that the Personal Envoy and the United Nations will grasp the scope and import of the proposal it is making, which is very consistent with justifications for a peaceful solution acceptable to the two parties and intended to guarantee self-determination for the people of Western Sahara.

It is because its very raison d'être is the quest for a just and lasting solution to the conflict in Western Sahara that the Frente POLISARIO once again reaffirms its willingness to continue cooperating with the Personal Envoy of the United Nations Secretary-General.

Letter dated 26 February 2003 from the President of Algeria to the Secretary-General

[Original: French]

I should like to thank you sincerely for your letter informing me of the visit of your Personal Envoy, Mr. James Baker III, to Algeria and for the interest you have consistently shown in the settlement of the question of Western Sahara since your election to the post of Secretary-General of the United Nations.

I had the pleasure of meeting Mr. Baker and learning of the new proposal he had drawn up in accordance with the provisions of Security Council resolution 1429 (2002) to ensure the self-determination of the people of Western Sahara.

As I promised, his proposal has been considered in depth in a constructive and open manner.

Algeria has considered the proposal on the basis of the principles that have always guided it in dealing with the question of Western Sahara, namely the need to ensure the exercise of the legitimate right of the Saharan people to self-determination, in accordance with the Charter of the United Nations, the position of the Organization with regard to decolonization, and the obligations incumbent upon it in respect of colonial States and peoples.

The Personal Envoy submitted his proposal with his habitual frankness and pointed out that the solution it offered was based on a compromise which did not seek to fully satisfy either of the parties to the conflict in Western Sahara and which was not open to negotiation.

Algeria has considered the Peace Plan for Self-Determination of the People of Western Sahara with a view to contributing to the establishment of guarantees concerning each stage of the proposed process.

These guarantees of transparency, legality and security have already been defined by the United Nations and accepted by the Kingdom of Morocco and the Frente Polisario in the context of the Settlement Plan and the Houston Accords. They are designed to conclude the process of decolonization in Western Sahara in a climate of freedom and legality, without administrative or military constraints and under the sole authority of the United Nations, thereby endorsing the credibility of the proposed solution and enhancing the reputation and prestige of the Organization.

Such was the spirit that prevailed during the elaboration of Algeria's response to the Peace Plan for Self-Determination of the People of Western Sahara, which is set out in the memorandum attached hereto. I should be grateful if you would bring it to the attention of the members of the Security Council.

Lastly, I should like to reassure you of my full determination and willingness to continue to cooperate both with you and with your Personal Envoy to ensure the success of the long-standing efforts of the United Nations to find a just and definitive solution to the question of Western Sahara with a view to bringing peace and stability to the subregion.

(*Signed*) Abdelaziz **Bouteflika**

Memorandum from Algeria concerning the new proposal from the Personal Envoy of the Secretary-General of the United Nations entitled "peace plan for self-determination of the people of Western Sahara"

[Original: French]

On 15 January 2003, Algeria welcomed with pleasure and hope His Excellency Mr. James Baker III, the Personal Envoy of the Secretary-General of the United Nations.

On that occasion, His Excellency Mr. Abdelaziz Bouteflika, President of the People's Democratic Republic of Algeria, reassured him of Algeria's appreciation for the tireless efforts he has been making since April 1997, with competence and devotion, to complete the process of a peaceful, just and lasting settlement of the conflict in Western Sahara under the auspices of the United Nations and through a referendum for the self-determination of the people of Western Sahara.

The President of the Republic also assured the Personal Envoy of the Secretary-General that Algeria would study, with all due attention, the "Peace Plan for Self-Determination of the People of Western Sahara", submitted to the two parties to the conflict, the Kingdom of Morocco and the Frente Polisario, and to Algeria and Mauritania, as neighbouring countries and interested parties.

Algeria's interest in the new peace offer submitted by the Personal Envoy is consistent with the support it has continually given since 1966 to the completion of the decolonization of Western Sahara in order to ensure that the right of peoples to self-determination, which is enshrined in the Charter of the United Nations, is finally secured in the Territory.

The exercise of this right has been the subject of many United Nations resolutions, including General Assembly resolution 1514 (XV), and of sustained practice, having been accepted as the ineluctable way for colonial countries and peoples freely to choose their future. Similarly, the Charter and practice of the United Nations have recognized and confirmed the prime responsibility of the Organization towards colonial peoples and towards the Non-Self-Governing Territories, two realities of the prevailing situation in Western Sahara.

The United Nations has effectively taken on this responsibility for Western Sahara through the Settlement Plan and the Houston Agreements on the holding of a referendum for the self-determination

of the people of Western Sahara that is free, fair and transparent and free from administrative or military constraints, organized and conducted by the United Nations. The implementation of this Plan has regrettably been blocked by events for which the responsibility has been clearly established. Fortunately, however, the United Nations has neither become disheartened by this impasse, which has persisted since 1991, nor relinquished its role in, and responsibility for, the situation concerning Western Sahara. Security Council resolution 1429 (2002) of 30 July 2002 confirms this determination.

By this resolution, the Security Council declares that it "continues to support strongly the efforts of the Secretary-General and his Personal Envoy to find a political solution to this long-standing dispute, invites the Personal Envoy to pursue these efforts taking into account the concerns expressed by the parties and expresses its readiness to consider any approach which provides for self-determination that may be proposed by the Secretary-General and the Personal Envoy, consulting, as appropriate, others with relevant experience".

The "Peace Plan for Self-Determination of the People of Western Sahara", presented by the Personal Envoy as a non-negotiable offer, stems from this Security Council resolution.

Algeria has examined this plan very carefully, in the hope of contributing to the success of the efforts of the Personal Envoy of the Secretary-General and, through him, the entire United Nations system, for just as it has always supported the right of the people of Western Sahara to self-determination and rejected the *fait accompli* policy, it has also continued to promote the maintenance of peace in the region and to affirm its attachment to respect for international law, of which the Security Council is both the embodiment and the guarantor.

Having studied the new proposal, Algeria would like to make the following observations:

- First, on the preliminary period of one year before the election of the Western Sahara Authority (WSA);
- Second, on the question of prisoners;
- Third, on the repatriation of refugees;
- Fourth, concerning the troops of the two parties;

- Fifth, on the period between the election of the WSA and the holding of the referendum on the final status of the Territory;
- Sixth, on the referendum on the final status of the Territory;
- Lastly, on guarantees for the successful implementation of the proposed Plan.

All these observations take into account the progress made in earlier negotiations between the parties under the chairmanship of the Personal Envoy of the Secretary-General and, in particular, the provisions contained in the Houston Agreements, signed by both the Kingdom of Morocco and the Frente Polisario.

I. The preliminary period of one year before the election of the WSA

Paragraph 15 of the proposed Plan states that "*the election for the Legislative Assembly and Chief Executive of W.S.A. shall be held within one year of the effective date of this Plan*". Nevertheless, no indication is provided on the organization and arrangements that will prevail during this crucial period during which, as noted in other paragraphs of the Plan, important operations such as the return of refugees, the enactment of provisions applicable to the troops of the two parties and, in the last phase, the election of the Western Sahara Authority will be carried out.

It is true that, in citing the provisions of the Houston Agreements of 1997 for some of the operations to be carried out during that period (including respect for the Code of Conduct mentioned in paragraph 17 and the confinement of troops provided for in paragraph 20) and in referring to the role to be played by the United Nations Mission for the Referendum in Western Sahara (MINURSO), the Plan submitted by the Personal Envoy gives some indication of the arrangements that may govern this preliminary phase.

Nonetheless, Algeria feels that the year preceding the election of the Western Sahara Authority will be a critical one. It therefore considers that the wording of the applicable arrangements should be made perfectly clear before the parties and neighbouring countries affirm their acceptance by their signatures.

For its part, Algeria believes that there is an obvious similarity between the problems and issues relating, on the one hand, to this preliminary one-year period and, on the other, to the one-year transitional period provided for in the Settlement Plan. Accordingly, Algeria considers that the management of that period by the United Nations should include guarantees of security and fairness

similar to those that will apply to the transitional period envisioned in the Settlement Plan, as consolidated by the Houston Agreements; these guarantees, moreover, have not been objected to by either party to the conflict.

In addition, despite the differences in purpose -- a self-determination referendum in one case and the election of the WSA in the other -- the similarity of issues relating to the preliminary one-year period and the transitional period stemming from the Settlement Plan is confirmed by the very fact that the transitional period effectively began when the ceasefire took effect on 6 September 1991.

Lastly, and except for the assessment of the material means and financial implications to be re-evaluated, such relevant measures and conditions have already been identified by the Secretary-General of the United Nations in his report of 13 November 1997 (S/1997/882).

Algeria therefore considers that, for the period between the entry into force of the Plan submitted by the Personal Envoy and the election of the Western Sahara Authority a year later, the United Nations should stipulate that:

(1) The Special Representative of the Secretary-General, who is already in the Territory, shall exercise all his functions and powers, in other words, exclusive authority over all issues related to the preparation of the election of the Western Sahara Authority, including measures to be taken concerning the troops of the two parties, the return of refugees, the release of prisoners of war and political prisoners, the supervision of the administration and police in the Territory, the guarantee of freedom of speech during the electoral campaign and, lastly, the organization and conduct of the election of the WSA , for which the exclusive responsibility is vested in the United Nations. It should be noted that similar provisions are set forth in paragraph 14 of the above-mentioned report of the Secretary-General;

(2) To assist the Special Representative, the United Nations shall proceed to deploy MINURSO civilian, military and police units in due course with appropriate levels of staff. This issue is clearly addressed in paragraphs 38 to 46 of the report of the Secretary-General;

(3) The United Nations, through the Special Representative of the Secretary-General and with the cooperation of MINURSO, shall supervise the administration of the Territory, including the

maintenance of law and order, as stipulated in paragraph 15 of the report of the Secretary-General;

(4) An amnesty shall be proclaimed before the repatriation of refugees begins, as provided for in paragraph 13 of the Secretary-General's report;

(5) The United Nations shall neutralize the paramilitary units in the existing police forces and make arrangements for the maintenance of law and order during the transitional period, as provided for in paragraph 24 of the Secretary-General's report;

(6) The Special Representative shall ensure, among other things, complete freedom of speech and assembly, and of the press, as well as freedom of movement for personnel and property into, out of and within the Territory, thus creating a climate of public tranquillity within which the election of the Western Sahara Authority, free of all constraints, intimidation and harassment, can be organized and conducted by the United Nations, as provided for in paragraph 14 of the Secretary-General's report;

(7) The Special Representative of the Secretary General shall be authorized to issue regulations prohibiting graft, fraud, intimidation and harassment which could interfere with the organization and conduct of a free and fair election under the exclusive responsibility of the United Nations, as stipulated in paragraph 14 of the Secretary-General's report;

(8) Before the repatriation of refugees begins, the Special Representative shall ensure that the authorities involved suspend any law or measure which, in his judgement, could obstruct the conduct of a free and fair election and would not otherwise be superseded by the regulations, rules and instructions issued by him, as provided for in paragraph 21 of the Secretary-General's report;

(9) To clear up any difficulty or problem that may arise during the electoral campaign and during the election of the Western Sahara Authority, the Special Representative may, under the exclusive authority of the United Nations and with regard to the organization and conduct of the election, be assisted by a commission in whose work the representatives of the two parties, the Kingdom of Morocco and the Frente Polisario, will be associated as observers, as stipulated in paragraph 33 of the Secretary-General's report;

(10) In order to ensure the promotion of a favourable climate for conducting the election of the WSA, the Special Representative shall, while respecting the right to freedom of movement, take steps to prevent any mass movement of persons from Morocco to the Territory of Western Sahara. These measures are all the more necessary in view of the occurrence of such

movements in 1975 and again in 1998, although the United Nations had already taken on responsibility for Western Sahara as from the entry into force of the ceasefire of 6 September 1991;

(11) Lastly, practical provisions shall be enacted to clarify the field and scope of the exclusive authority of the United Nations with regard to the organization and conduct of the election of the Western Sahara Authority and to the proclamation and implementation of its results.

Algeria considers the above-mentioned measures crucial to the successful unfolding of the one-year period between the entry into force of the Personal Envoy's Plan and the setting up of the Western Sahara Authority. These measures will make it possible to arrange for suitable conditions to prevent any unexpected event that could destroy the confidence and tranquillity which this period aims to establish or could even undermine the Peace Plan after the refugees have returned to the Territory.

II. Release of political prisoners and prisoners of war

Algeria clearly understands the reason for the absence of reciprocity between the two parties in the framework of their obligation to proceed to the release of prisoners, as set forth in paragraph 19 of the proposed Peace Plan.

Nonetheless, it believes that in a case where either party fails to comply with its obligations in this matter after the other party has begun to release its prisoners, it should be the responsibility of the United Nations, through its Special Representative, and, where appropriate, at a higher level, to ensure respect for this important principle of humanitarian law, from which no derogation should be tolerated by the international community.

III. Repatriation of refugees

Algeria notes that, under paragraph 19 of the proposed Plan, the "*interested parties agree that they shall continue their full cooperation with relevant international bodies until the completion of the repatriation process*".

This provision is a positive one, but it is nonetheless insufficient to ensure in practice a well-organized and safe repatriation process for the refugees and their resettlement in the territory in the required conditions of protection and assistance. Algeria therefore considers that the modalities defined in the Settlement Plan, which, moreover, have not been rejected or questioned by either party, should be implemented in the framework of repatriation envisaged by the new Plan. These measures are detailed in the Secretary-General's report (S/1997/882) and relate to the following:

(1) The prior assurance, by MINURSO, that all necessary conditions have been met for the safe return of refugees, including the reduction, confinement and containment of Moroccan troops present in the Territory, the designation by the Special Representative of crossing-points for refugees into the Territory, arrangements by MINURSO to ensure security at these crossing-points, including mine clearing of repatriation routes and security at the reception centres designated by the Special Representative. It should be noted that identical provisions are set forth in paragraph 24 of the Secretary-General's report (S/1997/882);

(2) Respect for the rights of refugees returning to the Territory who wish to rejoin their relatives in the Territory or make other arrangements as provided for in paragraph 25 of the Secretary-General's report;

(3) Assistance provided by UNHCR to repatriated refugees in reception centres or places where they may assemble during the entire period preceding the election of the Western Saharan Authority and, thereafter, with a view to their resettlement in the Territory. Provisions to this effect are contained in paragraph 28 of the Secretary-General's report.

IV. Concerning the troops of the two parties

In this regard, Algeria wishes to state its position on each of the two elements of paragraph 20 of the Plan proposed by the Personal Envoy.

1. Firstly, this paragraph states that "*Within [90] days after the effective date of this Plan, the armed forces of Morocco and the Frente Polisario will be reduced, confined, contained, and thereafter maintained in all respects strictly in accordance with the provisions of the 1997 Houston Agreements*". This satisfactory provision should be interpreted as representing strict respect by the troops of the two parties for "the provisions of the Settlement Plan as complemented by the Houston Agreements".

It is useful to recall, in this respect, that the merit of the Houston Agreements was, on the one hand, to confirm the relevant provisions of the Settlement Plan applicable to the armed forces of the Kingdom of Morocco and, on the other, to spell out the applicable measures for the confinement of the Frente Polisario troops which are not specified in the Settlement Plan.

In fact, the measures applicable to the Moroccan forces in the Territory are set forth in paragraph 20 of the Secretary-General's report (S1997/882), which indicates that it is complemented by paragraph 56 of the report of the Secretary-General contained in document S/21360 and Corr. 1.

Algeria therefore wishes to set forth its understanding of the commitments already agreed between the Kingdom of Morocco and the Secretary-General of the United Nations, which were confirmed in the framework of the Houston Agreements, to the effect that:

(a) *"Morocco was prepared to reduce its troops in the Territory to a level not exceeding 65,000 all ranks, within a period of 11 weeks from the start of the transitional period. The then Secretary-General accepted this as an appropriate, substantial and phased reduction in accordance with the settlement proposals. Accordingly, the reduction of Moroccan forces in the Territory is expected to be completed by 22 August 1998 and all those remaining, with the exceptions mentioned in the plan (S/21360, para. 56), would be confined by that date, with due account taken of the modalities and time required for the repatriation phase described in the present report"* (para.. 20 of the report of the Secretary-General of 13 November 1997 (S/1997/882));

(b) "The Moroccan troops remaining in the Territory will, with the exceptions mentioned in this paragraph, consist only of troops deployed in static or defensive positions along the sand wall constructed by Morocco close to the eastern and southern frontiers of the Territory. All intervention forces and artillery units will have been withdrawn, as will all Moroccan air force units previously used for interdiction and offensive operations. The only exceptions to these arrangements will be:

- *Certain logistic and support units required to support the Moroccan troops deployed along the sand wall, and not exceeding a level acceptable to the Secretary-General, will remain deployed at their present locations at Laayoune, Dakhla and Smara; they will not, however, carry weapons in the towns or circulate there in uniform, whether on or off duty.*

- *The Moroccan air force will continue to provide meteorological services, air traffic control and radio communications within the Territory but will retain only those aircraft that are essential for the logistic support of the Moroccan troops remaining in the Territory;*
- *The Moroccan navy will continue to perform such tasks as coastal patrolling.*
- *All the above activities will be closely monitored by the Military Unit of MINURSO"* (para. 56 of the report of the Secretary-General contained in document S/21360 and Corr. 1).

Since the Houston Agreements provide for the confinement of some of the Frente Polisario troops in its territory, Algeria, which hereby confirms its commitment to making the relevant contribution as agreed in the framework of the Houston Agreements, considers that the Frente Polisario should be the interlocutor in dealing with the United Nations, the Special Representative and the authorities of the countries concerned in respect of any issue related to the above-mentioned confinement until its completion, in other words, until the holding of the referendum on the final status of the Territory.

2. Secondly, paragraph 20 of the Plan proposed by the Personal Envoy specifies that the above-mentioned provision "is without prejudice to the deployment of Moroccan armed forces in purely defensive positions pursuant to the responsibility of the Kingdom for external defense under paragraph 8B of this Plan or the creation and normal functioning of law enforcement personnel in Western Sahara under the authority of W.S.A.".

In this connection, Algeria wishes first of all to express its concern that this provision concerning the Moroccan armed forces would rework the terms of an Agreement concluded within the framework of the Settlement Plan and confirmed within the framework of the 1997 Houston Agreements. This concern is well-founded because the Plan proposed by the Personal Envoy envisages, in paragraph 23, the signature of this document by Algeria and by Mauritania, which would thus accept the Plan and be obliged to cooperate in its success as neighbouring countries of Western Sahara. In other words, the provision contained in paragraph 20 of the new Plan would introduce an element of mistrust between the two parties and the neighbouring countries, although the latter are expected to promote in good faith the implementation of the Agreement which they will have signed.

It is perfectly clear that the above-mentioned deployment of armed forces of Morocco carries with it serious risks of tension and unfortunate incidents, at the very time when the comprehensive, impartial and faithful implementation of the proposed Plan should normally foster understanding and hope for all the peoples of the region. This Plan, which pursues the goal of peace in the region, could thus paradoxically lead to situations of conflict between Morocco and Algeria, which we have all avoided so far.

Algeria wishes to stress that, since the outbreak of the armed conflict in Western Sahara in 1975, neither Algeria in its own territory nor Morocco in the territory of Western Sahara has ever deployed armed forces on the internationally recognized frontier between Algeria and Western Sahara. The Moroccan armed forces are deployed along the sand wall located some ten kilometres from the international frontier between Algeria and Western Sahara. As envisaged by the Settlement Plan and by the Houston Agreements, the maintenance of these positions by the Moroccan armed forces is appropriate and quite sufficient both in order to monitor the frontier of Western Sahara "pursuant to the responsibility of the Kingdom for external defense" and in order to avoid any risk of incidents caused by the new configuration proposed, which Algeria considers as a threat to its own national security.

Algeria therefore makes the following suggestions:

(1) Parallel to the internationally recognized frontier between the territory of Algeria and the territory of Western Sahara, Moroccan armed forces should be deployed along the sand wall in purely defensive positions as envisaged by the Personal Envoy's Plan, following the arrangements described in the first subparagraph of the above-mentioned paragraph 56 of the Secretary-General's report in document S/21360 and Corr.1;

(2) MINURSO military observers should be deployed in sufficient numbers to monitor the Moroccan forces thus deployed, as specified in the last subparagraph of paragraph 56 mentioned above;

(3) Under the "responsibility of the Kingdom for external defense" envisaged in the Plan proposed by the Personal Envoy, the United Nations Security Council and the Secretary-General should clearly specify ahead of time that any incident claimed by the Moroccan party on the frontier between Algeria and Western Sahara could in no case provoke action or unilateral reaction by Moroccan armed forces but should be reported to the Special Representative, who would verify

it through MINURSO and, if necessary, notify the Secretary-General so that the United Nations could adopt any measure or decision that it deemed appropriate.

In making these requests that it considers to be legitimate, Algeria in no way intends to block the United Nations initiative and efforts to achieve a peaceful and final settlement of the Western Sahara conflict. Quite the contrary – by so doing, Algeria is demonstrating its concern that the Personal Envoy's Plan should be implemented with the calm required for its success.

V. Period between the election of the Western Sahara Authority and the holding of the referendum on the final status of the Territory

Algeria wishes to express its appreciation for the approach and arrangements in the Plan proposed by the Personal Envoy for the election of the Western Sahara Authority and in particular for definition of the electorate body and United Nations assumption of total and exclusive responsibility for the actual election.

The period between the election of the Western Sahara Authority and the holding of the referendum on the final status of the Territory is a transitional period. In addition, this period was certainly envisaged in the proposed Plan for the purpose of promoting confidence and calm at the prospect of the final referendum. It is thus a period during which the United Nations will retain important responsibilities, in particular for guaranteeing respect for the spirit and letter of the provisions of the proposed Plan.

Clearly the Personal Envoy has not lost sight of this issue, since the Plan which he proposes indicates, firstly, in paragraph 21 that *"The United Nations will assist the interested parties, in particular W.S.A., in fulfilling their responsibilities under this Plan"* and, secondly, in paragraph 22 that the Secretary-General of the United Nations will offer his good offices to assist the interested parties in the implementation of the Plan, that he will have the authority to interpret the Plan and that *"in the event of any disagreement about the meaning of the Plan, the Secretary-General's interpretation shall be binding on the interested parties"*.

Algeria considers that these clauses are encouraging; it believes, however, that other provisions and mechanisms should also be specified in order to prevent any possible serious incident affecting persons who returned to the Territory under United Nations protection and also, in general, to ensure respect for

the spirit and the letter of the Plan. In this context, Algeria believes that, during the period between the election of the WSA and the holding of the referendum on the final status of the Territory:

(1) The Special Representative of the United Nations Secretary-General should remain in the Territory so that, while respecting the powers entrusted both to the WSA and to Morocco, he can on behalf of the Secretary-General provide advice, authority and arbitration to help the parties to respect their commitments;

(2) MINURSO should remain in the Territory, with the staff considered appropriate, particularly as regards its military and police components, so that it can, without prejudice to the powers of the WSA , prevent any mishaps and any threat to the security of persons and particularly of refugees who have returned to the Territory under United Nations protection;

(3) The powers entrusted to the Western Sahara Authority should result, after its election, in the transfer of the authority given to it and should also give it the sovereign right to establish the administrations within its area of competence, which presupposes the dismantling of existing similar administrations. Moreover, in order to guarantee respect for the Plan and to avoid misunderstandings, this transfer and these changes should be effected under the auspices and with the assistance of the Special Representative of the United Nations Secretary-General;

(4) In addition, the Special Representative of the Secretary-General should help the WSA to prevent any mass population movement from Moroccan territory to the Territory of Western Sahara during the period preceding the holding of the referendum;

(5) With regard to the powers entrusted to Morocco for the "preservation of the territorial integrity against secessionist attempts" and in accordance with universal human rights principles and rules, any criminal investigation under the prerogatives conferred on the Kingdom of Morocco by paragraph 8B of the proposed Plan that is conducted by the representatives of Morocco should be supervised by the territorially competent court in Western Sahara established by the WSA in accordance with paragraph 12 of the Plan; in any case, any such investigation should be reported to the Special Representative of the Secretary-General.

VI. Referendum on the final status of the Territory

Algeria appreciates the fact that *"The referendum shall be organized and conducted by the United Nations and monitored by international observers accredited by the United Nations"* (paragraph 4 of

the proposed Plan) and that *"Sole and exclusive authority over all matters relating to any and all elections and referenda called for in this Plan, including their organization and conduct, shall be vested in the United Nations"* (paragraph 15). In fact, by such commitments, the United Nations is quite clearly confirming that it intends to assume its legal, moral and political responsibilities in the completion of the decolonization process in Western Sahara.

In all fairness, it must be said that the United Nations has not failed in this duty, derived from its Charter, since 1966 when the question was included on the agenda of the General Assembly. Indeed, since he was requested to do so by the United Nations General Assembly in 1985, the Secretary-General has constantly worked for the success of the decolonization process in Western Sahara. The various phases of formulation and consolidation of the Settlement Plan confirm this and the various reports submitted to the Security Council bear witness to the difficulties encountered. Among these difficulties, the question of the identification of voters was the subject of successive reports and then an obstacle to implementation of the Settlement Plan.

The identification of voters commenced in August 1994, as can be seen from paragraph 30 of the Secretary-General's report of 13 November 1997 (S/1997/882), which followed up the Houston Agreements and contains the detailed plan for the organization of the referendum of 7 December 1998. Unfortunately, the "Compromise Agreement on Outstanding Identification Issues" reached by the two parties in London in July 1997 under the auspices of the Personal Envoy did not suffice to resolve the situation. Nor did the Additional Protocols concerning identification, prepared by the Secretary-General in April 1997 and accepted in writing by both parties, allow any further progress. The Secretary-General therefore rightly noted in paragraph 21 of his report S/2001/613 of 20 June 2001 that *"The establishment of the electorate body for the referendum in Western Sahara has been, and remains to date, the most contentious issue and one of the main reasons for the successive deadlocks in the work of MINURSO"*.

By this recapitulation, Algeria wishes to emphasize that, until the electorate body that is to take part in the referendum on the final status of the Territory has been identified, implementation of the Plan proposed by the Personal Envoy will be seriously threatened. Past experience proves that it was not for lack of specific provisions, solemn and repeated acceptances by both parties and even confirmation by

the Security Council that identification within the framework of the Settlement Plan could not be completed.

Today, it is impossible to rule out with certainty a recurrence of the same situation. In such a case, however, the new aggravating factor would be that the Saharan refugees who in 1975 were forced into exile to flee repression would then be taken hostage inside the Territory. The resulting crisis would have even more dangerous repercussions than the unfortunate status quo established on the way to the application of the Settlement Plan, although it had begun to be implemented on 6 September 1991, with the entry into force of the ceasefire in Western Sahara.

In paragraph 5, the Plan proposed by the Secretary-General's Personal Envoy clearly defined the categories of persons over 18 years of age who were qualified to vote in the referendum: electors already identified by the MINURSO Commission as of 30 December 1999; those on the list drawn up by UNHCR as of 31 October 2000 (in both cases with no possibility of recourse or appeal); and, lastly, persons who had resided continuously in Western Sahara since 30 December 1999.

Similarly, in paragraph 6 the Plan codifies the arrangements for identifying persons "who have resided continuously in Western Sahara since 30 December 1999" and entrusts this task to the United Nations, whose determinations "shall be final and without appeal".

This shows that the United Nations already possesses the list of persons who may participate in the referendum because they were already identified by the MINURSO Identification Commission (subject to the addition of any descendants who will have reached the age of 18 by the date of the referendum), as well as the list of those who may participate because they were counted as refugees by UNHCR as of 31 October 2000 (subject also to the addition of any descendants who will have reached the age of 18 by the date of the referendum). On the other hand, the list of persons who are to participate in the referendum because they have "resided continuously in Western Sahara since 30 December 1999" still remains to be drawn up at a date left open in the Plan proposed by the Personal Envoy.

For the timely removal of this threat to the success of the Peace Plan for Self-Determination of the People of Western Sahara, Algeria considers that the persons entitled to participate in the referendum because they have "resided continuously in Western Sahara since 30 December 1999" should be

identified promptly by the United Nations in the manner specified in paragraph 6 of the Plan proposed by the Personal Envoy, as soon as the Peace Plan comes into force and in any case before the return of the refugees, in optimal conditions of rigor, objectivity and impartiality.

By proceeding in this way, the United Nations will also have in its possession the matrix of names in the electorate body for the referendum on the final status of the Territory of persons who have "resided continuously in Western Sahara since 30 December 1999" and will still have the leeway and the competence needed to update it, when the time comes, simply by verifying that the residence of those concerned is still permanent and by adding descendants who will have reached the age of 18.

This approach would not pose any problems for the United Nations. It would also not impose any constraints on either of the two parties, because each of them would have endorsed the Plan sincerely in the intention of promoting its success. Lastly, this measure would avoid a potential risk of another roadblock in the way of United Nations peace efforts.

VII. Guarantees for the successful implementation of the proposed Plan

Algeria takes note of the fact that the proposed Plan already envisages that:

- "Sole and exclusive authority over all matters relating to any and all elections and referenda called for in this Plan, including their organization and conduct, shall be vested in the United Nations".
- The Code of Conduct accepted and signed by the two parties in Houston on 16 September 1997 will ensure that the referendum campaign and the referendum are held in optimal conditions of fairness and impartiality.
- "The interested parties agree that the Secretary-General shall have the authority to interpret this Plan, and that, in the event of any disagreement about the meaning of the Plan, the Secretary-General's interpretation shall be binding on the interested parties".
- "By signing this document, the interested parties, the neighbouring countries and the United Nations agree to the terms of the Plan".

While these guarantees are pertinent, they are based solely on the good faith of the parties to the Western Sahara conflict. In fact, this conflict has amply demonstrated the stakes involved and the concerns existing

both as regards the two parties and as regards concerned neighbouring countries. Because of these stakes and concerns, similar guarantees obtained by the United Nations or assumed by it under the Settlement Plan have ultimately proved insufficient.

In this connection, it is useful to recall that, despite a Settlement Plan accepted by the two parties and approved by the Security Council and despite additional arrangements to which both parties agreed, as was the case in Houston in 1997 and in New York in 1999, there were obstacles to the organization of the referendum for the self-determination of the people of Western Sahara.

It is also useful to recall that, although the Settlement Plan accepted by both parties entrusted to the United Nations the organization and monitoring of the referendum, the proclamation of its results and the authority to supervise, through MINURSO, the adoption of final measures reflecting either outcome of the referendum, the United Nations Secretary-General felt it necessary, in paragraph 48 of his report S/2002/178 of 19 February 2002, to note that "the United Nations might not be able to hold a free and fair referendum whose results would be accepted by both sides; and there would still be no mechanism to enforce the results of the referendum".

For this reason, Algeria believes that implementation of the Plan proposed by the Personal Envoy must, from the outset, be accompanied by real guarantees. It believes that this would reassure not only the neighbouring countries which are required to sign and commit themselves but also, above all, the people of Western Sahara who are invited to accept a historic compromise in favour of peace but are entitled to live in guaranteed security and under effective United Nations protection. Lastly, Algeria believes that these same guarantees will only enhance the credibility of the United Nations, as the Organization of last resort for all the nations of the world, whose authority has sometimes been severely undermined.

Accordingly, in our opinion, the Personal Envoy's Plan should include the following guarantees:

(1) A local United Nations presence of appropriate size, with a specific mandate to deal with the complexity of the task entrusted to it and to prevent on the spot any mishap from the beginning of the process until the implementation of the result of the referendum on the final status of the Territory. In this regard, Algeria believes that the alterations to be made to the composition and mandate of MINURSO provide a timely opportunity to deal with this issue and considers that it is not absolutely

necessary to change the name of MINURSO, since in the end the task will be "to organize a referendum in Western Sahara";

(2) The Secretary-General and the Security Council should, in unison and in advance, undertake if appropriate to adopt any necessary measures to prevent and promptly correct any deviation in the implementation of the Plan, which – it should be recalled – will cover a total period of four or five years after its entry into force;

(3) The Secretary-General and the Security Council should also, in unison and in advance, promise the concerned parties, the neighbouring countries and the international community that the results of the election of the Western Sahara Authority and the results of the referendum on final status will be respected and enforced, including if necessary by the adoption of appropriate measures.

In adopting this position, Algeria is demonstrating its support for the fair and final settlement of the conflict in Western Sahara and the importance which it attaches to the promotion of relations of good-neighbourliness and cooperation with all its neighbours in the region, in a context of peace finally restored and stability recreated.

* * *

Algeria considers that the Plan submitted by the Personal Envoy of the United Nations Secretary-General represents a gamble for peace in the Maghreb – a gamble which should be taken by all concerned with determination and sincerity.

The comments made and positions adopted by Algeria in this memorandum on the subject of the Plan proposed by the Personal Envoy are not intended to question the spirit and letter of this new proposal or still less to undermine its provisions or structure. These comments and positions are based, first and foremost, on the reaffirmation of relevant commitments already made, in unison and without opposition, by the two parties and by the United Nations with a view to the implementation of the Settlement Plan. They are designed also, and above all, to protect this new plan from the disappointments and frustrations provoked by the paralysis which was the sad fate that events reserved for the Settlement Plan and for which the reasons and responsibilities are well known.

Algeria pays a tribute to His Excellency Mr. James Baker III, the Personal Envoy of the United Nations Secretary-General, for the perseverance, talent and dedication with which he has promoted the peaceful and

final resolution of this conflict through the self-determination of the people of Western Sahara, under the exclusive guarantee and responsibility of the United Nations.

It hopes that all necessary conditions will be created for the entry into force and implementation of this peace plan, with strengthened trust among all the concerned and interested parties, with protection for the legitimate rights and security of the people of Western Sahara and, lastly, with progress towards the final peace so long awaited by the Maghreb as well as by Africa and the entire international community.

It is in this spirit that Algeria reiterates to the United Nations Secretary-General and to his Personal Envoy that it is fully available to continue to give them its loyal cooperation for the final settlement of the Western Sahara conflict.

Note verbale dated 17 March 2003 from the Permanent Mission of Mauritania to the United Nations addressed to the Secretary-General

[Original: French]

The Permanent Mission of the Islamic Republic of Mauritania to the United Nations in New York presents its compliments to the Secretary-General of the United Nations and has the honour to transmit to him herewith a copy of letter No. 9/MAEC of 17 March 2003 from His Excellency the Minister for Foreign Affairs and Cooperation concerning the comments of the Islamic Republic of Mauritania on the peace plan for self-determination of the people of Western Sahara proposed by His Excellency Mr. James Baker.

Letter dated 17 March 2003 from the Minister for Foreign Affairs and Cooperation of Mauritania addressed to the Personal Envoy of the Secretary-General for Western Sahara

[Original: French]

In the framework of the excellent climate of cooperation and coordination that has always marked our relations with the United Nations, and following the visit that you made to Nouakchott on 16 January 2003 to present and explain your proposals concerning the peace plan for self-determination of the people of Western Sahara, I have the honour to inform you that we have considered the various aspects of this plan with great interest and particular attention.

On the basis of this consideration, we are now able to make the following comments:

(i) Mauritania greatly appreciates the consistent efforts made by the United Nations to find a just and lasting solution to the dispute on Western Sahara, which constitutes a major concern for the States and peoples of the region;

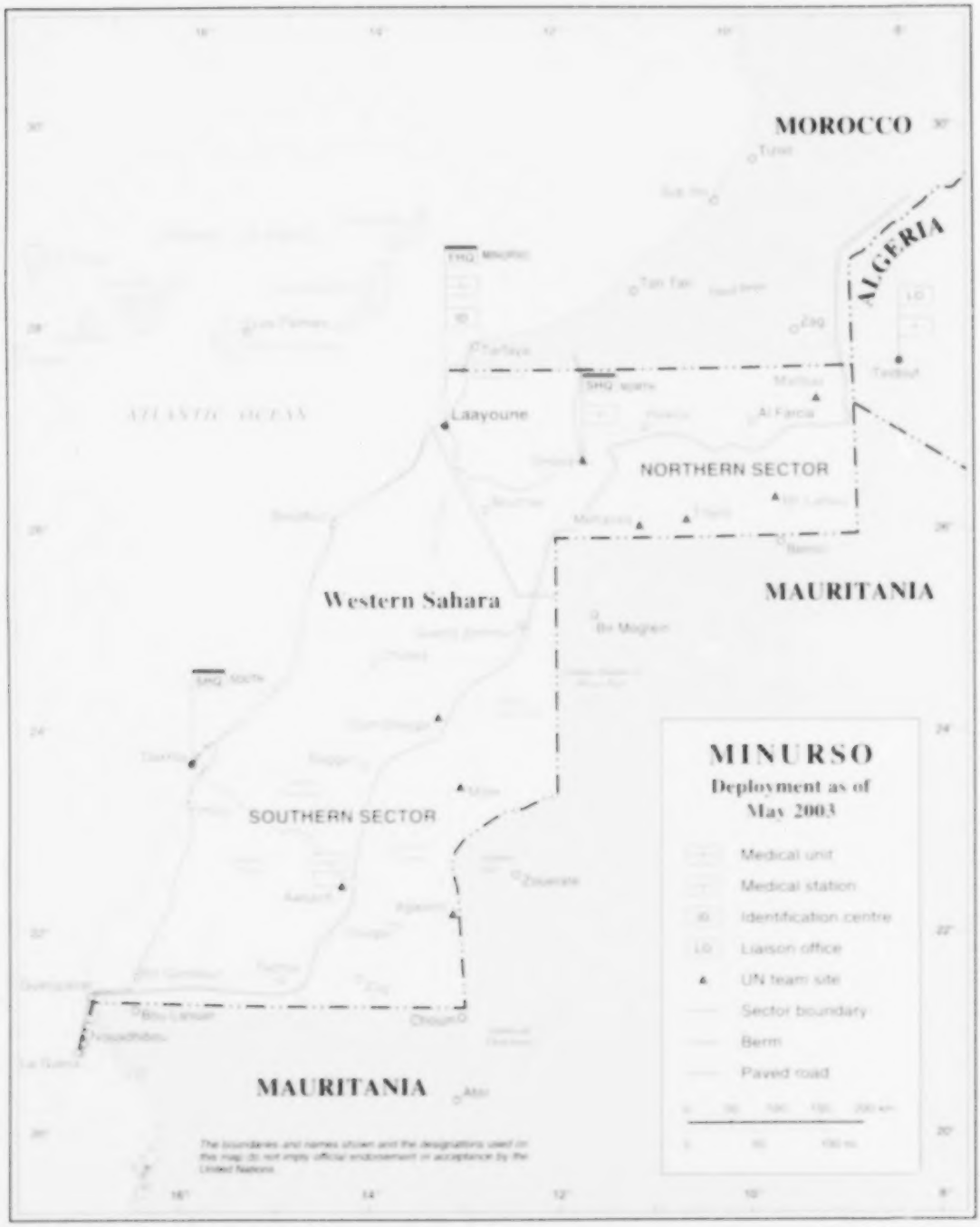
(ii) It reiterates its total confidence in your ongoing commitment over close on six years to the search for a solution to the dispute on Western Sahara and pays a tribute to your personal qualities of patience, wisdom and open-mindedness;

(iii) It notes that your new proposals represent an in-depth reflection of persevering efforts and a genuine will to find a solution to this dispute, which has lasted for more than a quarter of a century;

(iv) The Islamic Republic of Mauritania reiterates its full readiness to lend its backing to any political solution that meets with the support of the parties, with a view to a final settlement of the dispute on Western Sahara;

(v) It reaffirms its commitment to continuing to give its full support to United Nations efforts to find a solution to this dispute and to making any contribution requested of it in this context, in accordance with the relevant resolutions of the Security Council.

(*Signed*) Mohamed **Ould Tolba**


MOROCCO
ALGERIA
MAURITANIA
Western Sahara
NORTHERN SECTOR
SOUTHERN SECTOR
MAURITANIA
ATLANTIC OCEAN
Laayoune
Tifariti
Bir Moghrein
Zouerate
Nouadhibou
Chami
Tindouf
Al Farcia
Tan Tan
Zag
Tunit
Mauritanian Berm
MINURSO
Deployment as of May 2003
Medical unit
Medical station
Identification centre
Liaison office
UN team site
Sector boundary
Berm
Paved road
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